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MAHARAJ LIBEL CASE,

INCLUDING

BHATTIA CONSPIRACY CASE.

No. 12047 OF 1861.

SUPREME COURT, PLEA SIDE

JADUNATHJEE BRIZRATTANJEE MAHARAJ,

VS.

KARSONDASS MOOLJEE AND NANABHAI RUSTAMJI

D. LUKHMIDASS & CO.,
BOOK-SELLERS, PUBLISHERS AND COMMISSION AGENTS.

BOMBAY.

1911.

BL 1245
V4 J21

BOMBAY :

Printed at the LADY NORTHCOTE HINDU ORPHANAGE "K. N. SAILOR PRESS," 93, Chinchpokli Parel Road, by BHANJI DEOCHAND MEHTA. for D. LUKHMIDASS & Co., Book-sellers, Publishers and Commission Agents, 79, Parsee Bazar Street, Fort, Bombay.

SAHEN '66

PREFACE.

The Maharaja Libel Case having been out of print and unavailable for a long time, a new impression has become necessary to meet the demand that is there.

The book stands in no need of a foreward from us, the case is well-known and the issues involved still better known.

It furnishes an eloquent sermon on religion and pseudo-religion, and lays open the iniquities of the Vaishnava Maharajas.

There can be no doubt that things have improved since then, but it is open to question how far the Vaishnava Maharajas have improved from *Policy* more than *Principle*.

Very many of them still lay claims, though not quite so openly and unblushingly as before, to being "*gods*" but without being "*goodly*".

Faith has its freaks, and is none the less blind than Love.

The Maharaja Libel Case is true to-day and the prototypes of Jadunathjee are still "alive and kicking."

The Vallabhakul Charitra Darpan, Vallabhakul Chal Kapat Darpan and Vallabhakul Dambh Darpan, three Hindi Books (Price Rs. 2.) By Swami Blaktanand throws interesting light on the life and doings of some of these "Gurus", and would indicate that though the serpent is somewhat scorched, the poison is there, and they are as "dangerous" and "wanted" as before.

Publishers.

THE MAHARAJ LIBEL CASE.

THE ALLEGED LIBEL.

(*Official Translation of an Editorial Article in the "Satya Prakash," Gujrati Newspaper, of the 21st October, 1860.*)

THE PRIMITIVE RELIGION OF THE HINDUS AND THE PRESENT HETERODOX OPINIONS.

In the *Purans* and other *Shastras* of the Hindus it is stated that in the *Kaliyug* there will arise false religions and heresies, and impostors and heretics will cause adverse persuasions and adverse religious systems to be established. According to the Hindu *Shastras* five thousand years have now passed away since the commencement of the *Kaliyug*. From the Hindu *Shastras* themselves it is demonstrated that during this period of five thousand years as many new persuasions and religious systems as have arisen among the Hindus, should all be considered spurious heresies. Now, four hundred years have not as yet elapsed since the birth of *Valabh*, the projenitor of the Maharajas. In the books of the *Vaishnava* persuasion it is written that the birth of *Valabhacharya* took place on the 11th of *Waisakh Vud* of *Samvant* 1535, the day of the week Sunday; since this event 381 years have elapsed to this day, and since the beginning of the *Kaliyug* five thousand years have passed. The sect of *Valabhacharya* then originated within the *Kaliyug* itself. In the same way as the followers of *Dadu*, the followers of *Sadhu*, the *Ramsnehi*, the *Ramanandi*, the *Shejanandi* and other sects arose; so the sect of *Valabhacharya* arose; all these sects

have arisen in the *Kaliyug*, therefore according to the declarations of the Hindu *Shastras* they must be heterodox.

Jadunathjee Maharaj says that in the same way as some one goes from the gates of the fort to proceed to *Walkeshwar* and some one to *Byculla*, so exactly the original courses of the *Veds* and the *Purans* having gone forward, have diverged into different ways. What a deceitful proposition this is. Out of one religious system ten or fifteen by-ways must not branch off. The course of religion and of morals must be one only. What necessity is there to quit the straight road by which to go to *Walkeshwar*, and take the circuitous route of *Byculla*? Each sectary has made every other sectary a heretic, and one has scattered dust upon the other; what then is the necessity for acting thus? But we have already made known that as regards the weapons with which the Maharaj has come forth to defend himself, those very weapons will oppose the Maharaj, and annoy him. The Maharaj considers the Hindu *Shastras* as the work of God; he cannot then assert any particular statement of the Hindu *Shastras* is false. The said Maharaj cannot allege that the statement that in the *Kaliyug* heretical opinions will arised is false. Then like several other sects, the sect of the Maharajas has arisen in the *Kaliyug*, consequently it is established by the Hindu *Shastras* that it is a false and heretical one.

The sect of the Maharajas is heretical and one delusive to simple people; that is proved by the genuine books of the *Veds*, the *Purans*, &c., according to what is intimated above. Not only this, but also from the works composed by the Maharajas, it is proved that the Maharajas have raised up nothing but a new heresy and disorder. Behold

with regard to the subject of *Bramh* how *Gokulnathji* has amplified the original stanza, what a commentary he has made:—

तस्मादादौ स्वोप भोगात्पूर्वमेव सर्ववस्तुपदेन भार्यापुत्रादीनाम पिसमर्पणंकर्तव्यं विवाहानंतरं स्वोपभोगेसर्वकार्येसर्वकार्याणि मित तत्तत्कार्योपभोगिवस्तुसमर्पणंकार्यं संमर्पणंकृत्वापश्चात्ता नितानिकार्याणि कर्तव्यानीत्यर्थः ॥ १ ॥

"Consequently before he himself has enjoyed her, he should make over his own married wife (to the Maharaj), and he should also make over (to him) his sons and daughters. After having got married, he should before having himself enjoyed his wife make an offering of her (to the Maharaj); after which he should apply her to his own use."

Alas! what a heresy this is, what a sham this is, and what a delusion this is! We ask Jadunathjee Maharaj in what *Ved*, in what *Puran*, in what *Shastra*, and in what law-book it is written that one's married wife should be made over to a Maharaj or to a religious preceptor before being enjoyed. Not only one's wife, but one's daughter also is to be made over! Alas! in writing this, our pen will not move on. We are seized with utter disgust and agitation. To render blind people who see with their eyes and to throw dust in their eyes, and in the name of religion and under the pretence of religion to enjoy their tender maidens, wives and daughters, than this what greater heresy and what greater deceit? In the *Kaliyug* many other heresies and many sects have arisen besides that of *Valabhacharya*, but no other sectaries have ever perpetrated, such shamelessness, subtilty, immodesty, rascality, and deceit as have the sect of the Maharajas. When we use such severe terms as these, our simple Hindu friends are wroth with us, and in

consequence of that wrath of theirs, we have had and have much to endure. But when throwing dust in the eyes of simple people, the Maharajas write in their books about enjoying the tender maidens,—the peoples' wives and daughters, and they enjoy them accordingly, great flames spring up within our inside, our pen at once becomes heated on fire, and we have to grieve over our Hindu friends and over their weak powers of reflection.

Jadunathjee Maharaj has commenced issuing a small work styled "*The Propagator of our own Religion*"; we ask him in what way do you wish to effect the propagation of religion? Your ancestors having scattered dust in the eyes of simple people, made them blind? Do you wish to make them see, or taking a false pride in the upholding of your religion, do you wish to delude simple people still more? Jadunathjee Maharaj, should you wish to propogate or to spread abroad religion, then do you personally adopt a virtuous course of conduct and admonish your other Maharajas. As long as the preceptors of religion shall themselves appear to be immersed in the sea of licentiousness for so long they shall not be competent to convey religious exhortation. *Gokulnathji* having composed the commentary abovementioned, has attached to your *Vaishnava* persuasion a great blot of Ink.(\) Let that be first removed. Scorn the writer of the commentary. [Oh, you] Maharajas, acting up to that commentary, defile the wives and daughters of your devotees. Desist from that and destroy at once immorality such as that of the Company at the *Ras festival*. As long as you shall not do so, for so long you cannot give religious admonition, and propogate your own religious faith; do you be pleased to be assured of that.

THE PLAINT SET FORTH BY JADUNATHJEE MAHARAJ.

IN THE SUPREME COURT OF JUDICATURE AT BOMBAY,

PLEA SIDE.

The fourteenth day of May in the Christian Year One Thousand Eight Hundred and Sixty-one.

BOMBAY TO WIT.—JADUNATHJEE BRIJRUTTONJEE, MAHARAJ, by Charles Edmund Leathes, his Attorney, complains of KARSANDASS MOOLJEE, of Bombay Hindoo Inhabitant, and NANABHOY RUSTOMJEE RANEENAH, of Bombay Parsee Inhabitant, and therefore or otherwise, persons subject to the jurisdiction of this Honorable Court, in an action in the case for that whereas the religion of the Hindus is a religion of vast and unknown antiquity, and accordingly to the same and to the usuage, custom and practice in force in the Island of Bombay and in other parts of India, great honor and extraordinary respect and pre-eminence have been and still are awarded, by all good and worthy Hindus to the members of a certain caste or class of Hindus called Brahamins, and to the persons called Maharajas, as and being the present chiefs and heads of the said class of Hindus called Brahamins, and accordingly to the said Hindu religion, and accordingly to the belief and opinion of all good and worthy Hindus, the said persons so called Brahamins always have been and still are considered infinitely superior in worth and dignity to all the other castes and classes of society into which by the religion, sacred books, laws, usages and customs of the Hindus, the Hindus residing in the Island of

Bombay aforesaid, and in the other parts of India from time immemorial whereof the memory of man is not to the contrary have ever been and still are divided, and whereas also there are certain sacred books of the Hindus called *Purans*, *Veds* and *Shahastras*, and according to the same and according to the computation of time the present age of the world is by them divided and distinguished into four periods of time, called and distinguished *Yugs*, and which are respectively called to wit *Satya Yug*, the *Treta Yug*, the *Dwapar Yug* and the *Kali* or *Cali Yug*, which said last mentioned *Yug* also called the earthen or iron age, and whereas also the plaintiff now is and always has been a Brahamin and a Maharaj and a Hindu high priest of high caste, and is a good, true, honest, just, and faithful subject of our Lady the Queen, and as such has behaved and conducted himself, and until committing of the grievances by the defendant as hereafter mentioned was always reputed esteemed and accepted by and amongst all his neighbours and by and amongst all the Hindu inhabitants of Bombay aforesaid, to be a person of good name, fame, credit, and reputation, and for a long period of time previous to and until the committing of the grievances by the defendant as hereafter mentioned, he the plaintiff had resided in Bombay aforesaid, had during all the time deservedly obtained the good will of the Hindus, and other inhabitants thereof, and whereas also the plaintiff has always been and still is a member of a certain ancient Hindu religious sect to wit called the sect of *Valbhacharia* or the sect of the *Maharajas*, and has not ever been guilty, or until the time of the committing of the grievances by the defendant as hereafter mentioned been suspected to have been guilty of holding heterodox opinions in matters

connected with his religion or of offences or improper conduct hereafter mentioned to have been charged upon and imputed to the plaintiff or of any of them, or of any other such offences or improper conduct, by means of which the said several premises the plaintiff before the committing of the grievances by the defendant as hereafter mentioned, had deservedly obtained the good opinion and credit of all his Hindu neighbours and other good and worthy subjects of our said Lady, the Queen, to whom he was in any wise known to wit at Bombay aforesaid, yet the defendant well-knowing the premises, but greatly envying the happy state and condition of the plaintiff and contriving and wickedly and maliciously intending to injure the plaintiff, his good character, of a Brahamin and in his said character of a Maharaj and High Priest, and in his said good name, fame, credit and reputation and to bring him into public scandal, infamy and disgrace with and amongst all his Hindu neighbours and other good and worthy subjects of our Lady, the Queen, and to cause it to be suspected and believed by those neighbours and subjects, that he, the plaintiff, had been and was guilty of holding heterodox opinions in matters connected with his said religion, and that he had been and was guilty of offences and improper conduct hereafter mentioned to have been charged upon and imputed to him, and to harass and oppress him heretofore to wit on the twenty-first day of October one thousand and eight hundred and sixty, to wit at Bombay aforesaid in a certain newspaper, printed and published at Bombay aforesaid, in the Gujratee language and character, but circulated amongst and read and understood by divers Hindus and other inhabitants of Bombay aforesaid, and of other parts of India, called the *Satya Prakash,* which being translated into the

English language is as follows, that is to say, *the light of truth*, falsely, wickedly, willfully, designedly and maliciously did print and publish falsely, willfully, designedly and maliciously caused to be printed or published, of and concerning the plaintiff, and of and concerning the religious opinions of the plaintiff and of and concerning the conduct and character of the plaintiff as such Brahamin, Maharaj and Hindu High Priest, of and concerning the said sect to wit called the sect of *Valabhacharia*, and of and concerning the plaintiff as and being a Member of such sect, and of and concerning such other circumstances as aforesaid, a certain false, scandalous, malicious, infamous and defamatory libel, which said false, scandalous, malicious, infamous, and defamatory libel was by the defendant printed and published and caused to be printed and published in the same newspaper on the day and year aforesaid at Bombay aforesaid, in the Gujratee language, and character, and was and is accordingly to the tenor and in the words and figure following, that is to say—(Here follows a copy of the alleged libel in the Gujratee language and character.) And the plaintiff in fact says that the said false, scandalous, malicious, infamous, and defamatory libel so printed and published and caused to be printed and published by the defendant as aforesaid correctly translated into the English language was and is, according to the tenor, following; that is to say, (Here follows the English translation of the alleged libel.)

By means of the committing of which said grievances by the defendant, the plaintiff, has been and is greatly injured in his character of a Brahamin and in his character of a Maharaj and Hindu High Priest and in his aforesaid good name, fame, credit and reputation, and brought

into public scandal, infamy and disgrace with and amongst the said Hindu Inhabitants of Bombay, and other good and worthy subjects of our said Lady, the Queen, in so much that divers of those neighbours, inhabitants of Bombay, and subjects to whom the innocence and integrity of the plaintiff in the said premises were unknown, have on occasion of the printing and publishing of the said grievances from thence hitherto suspected and believed and still do suspect and believe the plaintiff to have been and to be a person guilty of holding improper and heterodox opinions in matters connected with his religion, and of the offences and improper conduct so as aforesaid charged upon and imputed to him by the defendant, and have on that account from thence hitherto shunned and avoided the company and conversation of the plaintiff and have wholly refused and still do refuse to have any acquaintance or discourse with and to bring and other gifts and presents to him as they were before used and accustomed to do and would have done again had not the said grievances been so committed aforesaid, and the plaintiff has been and is by reason of the committing of the said grievances otherwise greatly injured, and damnified. To the damage of the plaintiff of Rupees Fifty Thousand, and thereupon he brings suit, &c.

THE ARGUMENT ON A DEMURRER FILED BY THE DEFENDANTS.

SUPREME COURT.—PLEA SIDE.

(BEFORE THE HON'BLE SIR M. SAUSSE, KT., CHIEF JUSTICE.)

First Day, Tuesday, 2nd July 1861.

Jadunathjee Brijruttonjee Maharaj vs. *Karsandass Mooljee and another.*

Mr. Bayley, with *Mr. Scoble*, instructed by Messrs. Collier and Leathes, appeared for the plaintiff.

Mr. Anstey, with *Mr. Dunbar*, instructed by Messrs. Acland and Prentis, for the defendants.

This case was set down for argument on a demurrer filed by the defendants. The demurrer was on various grounds to show that the plaintiff had no *locus standi* in the Court in that form of plaint.

Mr. Bayley took a preliminary objection that the defendants could not be heard on the ground that they had not complied with the Rule of the Court No. 19 of 1825, which required that on the margin of the demurrer and paper books, some at least of the grounds of demurrer should be specified.

Mr. Anstey submitted that the rule had been complied with and that sufficient cause had been set forth to entitle the demurrer to be entertained. He adduced English authorities in support.

The Chief Justice said there was no rule in this Court which prohibited a special demurrer.

But the Court has, since he had the honor of presiding here, discouraged such demurrers. There was no rule prohibiting a special demurrer, and therefore a party cannot be said to have no right to file one. He thought that under the authorities, the reference given in the margin to the grounds in the body was sufficient, and he could not refuse to proceed with the hearing.

The objection having been overruled.

Mr. Anstey opened his argument by stating that a certain Jadunathjee Brijruttonjee Maharaj was the plaintiff, and two persons, Karsandass Mooljee, a Hindoo and a Nanabhoy Rustamjee Raneena, a Parsi, where the defendants.

He stated that the plaint set forth was clearly open on the face of it to a general demurrer, not included in the special grounds. That general ground was public policy. The grounds of demurrer set forth specially are as follows:—First that in the plaint, it was not stated, alleged, or specified that the alleged improper and heterodox opinions surmised to have been imputed to the plaintiff, are or in what manner and to what extent they are improper and heterodox according to the Hindu religion or that of the Valabhacharya, or what were or are the doctrines of the said religion or sect. Secondly, it was not stated, &c. what the alleged offences and improper conduct are, and to what extent, if they are to any extent, contrary to the said religion or the doctrines of the said sect on the alleged custom or practice in force in Bombay and other parts of India. Thirdly, it was not stated, &c. what is the alleged custom, usage, &c., and by what persons and sects the same is followed and observed and in particular whether the same is a Hindu or a Christian usage, &c.

Fourthly, it is nowhere stated that it is contrary to the doctrine or discipline or custom, &c. of the Hindus, &c. for the Maharajas under pretence of religion, to enjoy the tender maidens, wives, and daughters of the people. Fifthly, for that there is no specific offence charged against the defendants or either of them. Sixthly, it is not stated, &c. in what sense the expressions "heterodox opinion" and "offence and improper conduct" are understood or applied by the plaintiff or the Maharajas, or the Hindus generally. Seventhly, that the said expressions are insensible and ambiguous, and have no meaning in law. Eighthly, that the several inuendoes, alleging that the plaintiff and other Maharajas, are guilty of rascality and shameful conduct, and defile the wives and daughters of their devotees and other Hindus by criminal intercourse with them, &c., are not warranted by the words of the supposed libel, nor supported by any inducement or introductory averment to which the inuendoes refer. Ninthly, that alleged translation is altogether incorrect, and the sense of it repugnant, and at variance with the alleged libel. Tenthly, that there are divers clerical errors in setting forth the libel, whereby the translation and libel are unintelligible and insensible. And, eleventhly, that there are omissions of material statements and averments, especially as to the alleged commentary and book published by one Goculnathjee and by the plaintiff himself, and to which the alleged libel purports to be a reply.

Mr. Anstey would first contend that on the grounds of public policy, the Court should not entertain such an action. He had made many researches and enquiries, and not an instance could be discovered of an attempt like this, wherein a

Maharaj or Hindu High Priest, sought, by the machinery of her Majesty's Courts, or by that of the late East India Company's Courts, to enforce the discipline of his sect. It behoved the Court to decline to lend its jurisdiction to such uses: else it might be that the Court would find itself helping some impure sect for the propagation of most immoral, irreligious, and beastly doctrines. Now what is the origin asserted by the Maharaj? If one can discover any meaning of the plaint, the plaintiff is a priest of a sect which came into birth in the sixteenth century, at the same time when our gracious King Henry VIII. purified his own Church by much the same means. He is regarded with singular respect amongst the Brahmins, who in their turn are similarly revered by the Hindus:—and disregarding his duty as a Hindu to venerate the Maharaj, the defendant employed his leisure time to set at nought the authority of the Maharaj and expose the immoral doctrines of the sect. It was declared that the Maharaj was entitled to a different treatment, but that not having been so treated by the defendant he was disparaged and lowered in the eyes of his devotees, and therefore he claimed these damages. Mr. Anstey said that on the face of plaint it was clearly a spiritual offence for which the plaintiff sued, for the plaint sets forth his spiritual ascendancy over the Hindus. It was contrary to public policy that he should be allowed to come into this Court, for it was not a libel concerning his private character, but against his office as Maharaj. He (Mr. Anstey) could find no authority for such a suit, where a heathen priest attempted to establish his spiritual ascendancy by means of an action for libel. The rule of non-interference in religion has been laid down in the Acts of Parliament, and applied by Charter to India, and the learned

counsel urged, that this Court would not allow that good rule to be violated in a matter where it was impossible to know before-hand the enormity of the mischief likely to result from such interference. Suppose, for illustration, that the defendants are religious reformers, whose sole view is to promote the truths of natural religion and to get rid of all superstitions and religious abuses, which are but of very modern growth, and not to be traced to the mysterious past, will not the Court take it to be against public policy to entertain a suit to stop them? a suit by which it is endeavoured to support the ill-gotten authority and presumed ascendancy of the plaintiff? and will not public policy refuse to allow such authority to extinguish the progress of reformation in a smooth and unobstructed course? He (Mr. Anstey) found his own view to be always entertained by the Charter Courts. In the Asiatic Journal for May 1832 was the report of a Hindu case of breach of promise of marriage, in which the Chief Justice who decided it, observed that all Hindu religious matters and usages should be kept out of the Supreme Court. In the case of the Khojas and Memans reported in Sir Erskine Perry's Oriental Cases, p. 122, his Lordship laid down the doctrines, which Mr. Anstey conceived to be that of this Court (reads the passage). With reference to the same question in the case of Ardaseer Cursetjee *vs.* Perozebye, 10 Moore's Privy Council Cases, p. 414-19, the Lords of Coucil are found expressing themselves thus (reads the passage). On the authority of this case, which is so strong in point, will the Court lend itself to support this ecclesiastic, this Maharaj to enforce his spiritual authority? If the scene were changed from India to England, where the Judges take cognisance of spiritual suits, even there this Court would not

lend its jurisdiction to the Church Established, inasmuch as although the Ecclesiastical or Courts Christian exist there, a Court of Common Law never intervenes, and declines to entertain such matters, and refers parties to those Courts. This is carried so far that, where the Ecclesiastical Court has power to entertain an action of defamation, the Court of Common Law never assumes a concurrent jurisdiction to entertain such a suit, as partaking of an Ecclesiastical nature in illustration of his arguments. Mr. Anstey contended that either this action was improperly brought, because his lordship had not the judicial knowledge of the Hindu doctrines, usages, &c., and especially of the modern sect of Valabhacharya, upon which plaintiff based his authority, and consequently his lordship must disallow the suit from going on; or that this Court being not congnisant of those matters, the plaint was faulty in not setting forth what those doctrines, &c. are. To test this he would assume the first of the alternatives just named to be true. He would therefore read from authorised works on Maharaj doctrine and practice, what are the enormous and horrid canons of faith and morals, of which his Lordship was by the plaint assumed to be judicially cognisant.

Mr. Bayley.—We are to argue the demurrer; the facts are admitted. As to what the Valabhacharya sect is, we have nothing to do.

Mr. Anstey.—I say you have, unless your assumption is wrong, that his Lordship has judicial cognisance of those sects and doctrines.

Chief Justice.—I say I have no such knowledge nor am I called upon to have it.

Mr. Anstey said that the second alternative therefore was now the only one open to the plain-

tiff, namely that the Court was confined to so much of his doctrine and discipline as was properly averred in his plaint. That averment was demurrable for its insufficiency. The first point in the demurrer was that it was not stated or specified in the plaint what the alleged heterodox opinions or the sect of Valabhacharya were. The learned counsel contended that it ought to have been so stated, and the plaint was therefore bad, and the reason for that was that in every action the defendant has right to an answer, to have the alleged libel set forth fully, and that the statement on the face of the plaint must be such as to enable the Court to give judgment as opinion on law, in suport of which argument he referred to two cases, *Solomon* vs. *Lawson*, 8 Q. B. 823, *and Cartwright* vs. *Anderson*, 5 B. and A. In the first of there the omission of a letter in the count for libel, and in the second that of a word in a document were held material to the plaint. Again when libel is set out, there must be by way of inducement or inuendo, or both, sufficient averments, to explain the libel, and if there are not such averments, then it is no libel. For want of such necessary averments to connect the libel with the introductory matter, the plaint is held insufficient, *Grey vs. Cooper* 9 L. J. 9 Exchequer, and *Robinson vs. Clarke.* To call a person a "damned fool," and a clergyman a "dunce," were not held libel [cases cited.] It has been well settled as a duty incumbent on the non-conformists to set forth the doctrines and practices of their body to enable the Court to judge of inuendoes connecting them with libel, *Hartley vs. Herrick*, 8 Term Reports. In the present case it should have been shown by positive averment that the plaintiff was a lawful priest, for he sued as priest, and that his sect was a sect capable of being protected at law and that he

was liable, and how to be damaged by the slander. In another case it has been held not a libel to publish of a Catholic priest that he imposed a degrading penance upon a man, in the absence of the averment that such would expose him to the censure of his superiors. The same doctrine pervaded our law, and Mr. Anstey remembered the Lord Justice Knight Bruce, when Vice Chancellor, refusing to grant injunction for ejecting a clergyman from the pulpit, on ground that the affidavit was insufficient to show that the sect, to which he belonged, had the same view of the decencies of spiritual life and morals as the rest of the English world. In Burn's Ecclesiastical Law, he found it clearly laid down that a man cannot be proceeded against in a temporal court for mere heresy, except where the Statute made such offence punishable by law. The learned counsel here pointed out the distinction between a written and an unwritten slander, and said that in order to constitute a libel of an imputation on your conduct in profession, it must be such an imputation as to make it probable that you would be injured in your circumstances. Suppose that the plaintiff had professed to be a priest of the goddess Bhowanee, but not being recognised as an authority, be deserves no protection of law, and no amount of imputation on his illegal profession could be construed into libel. In *Morrison vs. Langdon*, 2 Fuller 724, the Court refused to entertain the action for libel brought by a jobber for being called a "lame duck." In other cases it has been laid down that where the imputation was cast upon one appearing on the face of the count to be unworthy of the protection of law, in libel he could not recover. The learned counsel then went on to remark upon the law of libel as regards an alien. It had been at one time held that an alien cannot sue on ground that he had

no local allegiance, and was a resident abroad; but now it has been held that he can but that he ought to show that he has some ground to invoke the protection of law. These cases, said Mr. Anstey would apply strongly to the present case in one of H. M.'s Chartered Courts, because it has been so decided by the highest authority, viz., Lord Brougham's judgment in the case of *Mayor of Lyons* vs. *The E. I. Co.* We have possessed India, and especially Bombay, for a period of 201 years by right of conquest and free gift, and during that period no action of this sort has ever come before the Court, which furnishes a cogent argument that no law existed to warrant the bringing of it, and this law of defamation of a spiritual man was never communicated to the Natives by the Crown. Mr. Anstey now came to the objection that the word "improper conduct," &c., were insensible and ambiguous, which therefore constituted a good ground of demurrer. In *Evans* vs. *Hutton*, 6 vol. Jurist 1052, the words "Her Majesty's Government" were held ambiguous, &c. Who was to define the words? the plaintiff talked of a custom and usage, but he did not define whose custom or usage, what was improper, what was heterodox, and according to what doctrine, for there were a thousand sects of Hindus, each hating the other. A Reverend friend (Dr. Wilson) had very properly asked, how can we define what is "heterodoxy,"—that is "the *other* opinion," until we know what "*the* opinion" (or "doxy") is? How could his Lordship, prevented by common law from enquiring into heresy as respects the Scotch, the Irish the Protestant, &c., determine the imputation "heterodox" in this case? He (Mr. Anstey) submitted that on the face of the plaint, it seemed that it was a mere matter of discipline that there was no malice on part of the defendants, who

were merely actuated by a motive to perform a public duty. Those inuendoes were not justified by the language of the libel. In support of this statement the learned counsel cited at length the cases of *Hem vs.*——, *Soloman vs. Lawson*, *Goldstein vs. Hurst*, and *Clement vs. Fisher*. The only libel tangible can be divided into two heads, the one imputing the orthodoxy of the doctrines of the sect of Maharajas, and the other denouncing their immoral practices. The plaintiff alleges that these imputations have brought him into contempt, but he does not say in what manner. These inuendoes have no meaning at all. Mr. Anstey urged that the utmost indulgence and license should be accorded to a fair criticism, and that the alleged libel was a fair and a liberal criticism of a book written some years ago by one Goculnathjee Maharaj, and of a commentary written thereon by the plaintiff himself. There was not a single Protestant or a Roman Catholic journal which would not be made the subject of an action at the instance of the other for imputing heresy to each other, if it be allowed that the so-called heresy is a libel. The alleged libel was a legitimate denunciation of a faith not partaken of by the writer for the purpose of protecting the innocent from being led into a path of immorality and wickedness. Every Protestant writes a polemic against the Catholic, and every Catholic against the Protestant, and they will do so until the end of time, and yet neither of them shall be lawfully chargeable with libel. That book of Jadunathjee called the "Propagator" ought to have been mentioned in the plaint. When preceptors of religion neglect their duty they become unfit for their post, and liable to criticism, which could not be construed into a libel. If these

inuendoes be construed as libel, then St. John must be held liable for that offence when he said, "Come ye out of her, &c." There was one ground of demurrer which Mr. Anstey insisted upon, which was that the translation of the article contained in the plaint was improper, and not an official translation. In conclusion Mr. Anstey urged that the Court ought not, on ground of public policy, to interfere in religious matters of the Hindus, and submitted that the demurrer ought to be allowed.

The following is the extract of the case of *Attorney General* vs. *Wilkinson*, before Sir Knight Bruce, reported in the *London Times* 18th March 1844 :—

(*From the "Times" of the 18th March* 1844.)

ATTORNEY GENERAL *vs.* WILKINSON.

"*Mr. Simpkinson*, and *Mr. Rolt* moved for an Injunction to restrain three persons of the names of Wilkinson, Monk and McPhail, from interfering or meddling with the affairs of the Meeting House belonging to the Society of Protestant Dissenters, called the Particular, or Calvanistic Baptists, at Huncoat, in the country of Lancaster, and from acting as Trustees under the Indentures of Trust, under which the meeting-house was held and regulated, and to restrain McPhail in particular, from officiating as minister of the same meeting-house.

"The information and bill were filed at the relation of George Lawson, who was one of three surviving trustees;—(of whom the two defendants, Wilkinson and Monk, were the others), alleging various acts of misconduct on the part of the three defendants, particularly in making use of the meeting-house as a debating room for political purposes, allowing their adherents to express their

opinions of the preacher, by applause, during the service, conversing loudly, and even smoking, during the same time, and, particularly (with regard to McPhail) that he had of late preached Chartist doctrines, and had denied one of the most material religious doctrines held by the congregation, namely, the eternity of future punishment for sin.

"*Mr. Rolt* read several affidavits, in which it was sworn, that McPhail, had on one occasion, called on such members of the congregation present, as were of Chartist opinions, to hold up their hands, for the excommunication of such members, as were not Chartists ;— that he had admitted to the deponents that he did not believe in eternal future punishment ; that McPhail had been in the meeting-house in the pulpit, smoking, while there were, in the body of the building, large numbers of colliers, wearing their hats or caps, and smoking short black pipes, and all this on a Sunday when Divine service ought to have been performed ; and that McPhail had read extracts, (and commented on them,) from the *morning Star*, and from Richardson's *Black Book*, during his sermons, and advocated therein Chartist doctrines.

"*His Honar* observed the deed of trust required that the minister of the meeting-house should believe in the doctrine of eternal punishment in a future state for sin committed in this. He said he did not see, as matters stood, and on an interlocutory proceeding, and as the information did not pray anything in the nature of a receiver or manager, that he could make the order as to Wilkinson and Monk. He had no means of judging, what, according to the peculiar doctrines and habits of their sect, amounted of indecency or scandal, whether smokig, or reading a newspaper,

in the pulpit or meeting-house was so. What might be indecent, or scandalous in the Catholic Church, might be viewed in a very different light, by many sects; and this His Honor said, with all respect to the congregation now in question. On the point of doctrine, as regarded McPhail, the case seemed tolerably clear; without saying what he might do, on another application, and an amended record, he thought, it would not be safe, under present circumstances, to act against the two gentlemen. Wilkinson and Monk. His Honor was not satisfied that there was a case, in which, looking at the whole evidence, it would be right to act against McPhail, except on the point of doctrine.

"*Mr. Russell*, having addressed the Court on that point, asserted that, if Mr. McPhail did not believe in the doctrine of eternal future punishment, he had forsworn himself..... He swore, "that it is not true that he does not believe," and that was equivalent, for all purposes, (and particularly when uttered by a man, under, in fact, a charge of perjury,) to his saying "he does believe" so and so.....

"*His Honor* said, that he expressed neither approbation nor disapprobation, in a religious or moral point of view, of what had been said on either side. The case on the bill, answer and affidavit, as to the trustees, was not, with sufficient plainness, established to warrant the Court in making an order as to them. It was, however, otherwise as to the minister. If there were an officiating minister, holding doctrines, not in conformity with the provisions of the deed, it would be a plain and manifest breach of trust..... Comparing the general with the particular charges, coming from such a quarter as they did, His Honor, upon the evidence before him, felt bound

to come to the conclusion, that, on the point he had last adverted to, the minister did not hold the doctrine that the deed of trust required. His Honor felt, that, so far as the minister was concerned, he was bound to grant the injunction."

Second day, Thursday, 4th July 1861.

Mr. Bayley, with whom was Mr. Scoble, stated that he appeared to argue the case on behalf of the plaintiff, and that he was taken by surprise at the great quantity of irrelevant argument addressed to the Court by his learned friend, Mr. Anstey, and in answer to a sentence to which he gave utterance, he would merely say that as this was a demurrer not on any matters of substance, but purely of form, the rule has been violated, and the Court could not allow any of those eleven points without overturning the rule which has been in vogue for centuries in England and here for many years. The learned Counsel would address a few observations to shew his learned friend had no *locus standi* and no right to go into general demurrer and the cases cited thereon. Where a party files a special demurrer he is bound to it, and therefore could not, and has no right whatever to argue points on general demurrer. As to this point he referred to what is invariably relied on by lawyers,—Comyn's Digest and Stephen's Pleading, in which it is laid down that in special demurrer a party waives all points, and adheres to the particular points specified. The cases cited by his learned friend under the title of inuendo were not applicable here by the laws of pleading, and every point taken by him in that respect was frivolous. The English Common Law Procedure Act, which was passed in 1852, and had not been introduced here, merely restored the

simplicity of old pleadings, brushed away the superfluous growth of technicalities and abolished special demurrers. He would refer to the language of the clause by which the modes of procedure in Common Law are pointed in the Charters of the Supreme Courts in India, and from that he would be justified in saying that special demurrers are not allowed.

Chief Justice.—Mr. Bayley, you need not trouble yourself about that. It has been the practice here for a long time to take special demurrers, but the Court discountenances them by not allowing costs. It will be useless your arguing the point, for I am not going to change that rule of the Court.

Mr. Bayley, however would still say that the English tachnical points are not incorporated here by the Charter. In the case of the *Queen* vs. *Alloo Paroo*, reported in Sir Erskine Perry's Oriental Cases, p. 551, the Chief Justice decided that the technicalities of English law and pleading are not to be applied to India; and the point to be decided here was not merely what the law here was, but what would ultimately be decided in the Privy Council. Mr. Bayley's contention, of course, was that the plaint was sufficient, for their was no such thing as a declaration in the procedure here, and the learned counsel called the attention of the Court to what was a *plaint* (reading the definition of "Plaint" from Comyn's Digest, and Wharton's Law Lexicon, Edition of 1860). The mode of procedure at common law adopted here was analogous to that in Engish County Courts, but in the latter the technical system of special demurrers does not exist. The matter to be discussed was whether the plaint contained the cause of action, and he ventured to assert that it was sufficient. His learned friend was tied down to the

points mentioned in the special demurrer, and he could not therefore digress from them, and attack the plaint in substance. His argument had branched out into a point whether certain parts of the plaint were or were not contrary to public policy. If a man demurs specially, he waives all points and is tied down to the special ones, and Mr. Bayley had shown by authorities that his learned friend had no right to argue general points, they not having been set down on the margin. In *Parker* vs. *Reilly*, 3 M. & W., the Court expressed an opinion that a party could not go beyond the points mentioned in the margin, and in *Arbowin* vs. *Anderson*, 1 Q. B. Reports, it was decided that the paper books must state the points intended to be made on each side, and that counsel could not go out of them. That had not been done so in this case. Therefore on both these grounds, the defendant was not entitled to go into the question of public policy, and he could not be heard. This Court cannot, nor can any Court travel one inch beyond what has been laid down in the demurrer book. Turning to another part of the argument, he (Mr. Bayley) said that having admitted all the facts of the plaint, his learned friend could not argue that the translation of the article was incorrect.

Chief Justice.—But suppose there is a reupgnancy between the translation and the original document, how is the Court to come at that? One of the rules of the Court is to recognise only the official translation. Suppose the original Guzeratee document differs from the translation of it, and if one of the grounds of the demurrer is that there is that difference, then the defendant cannot admit such translation.

Mr. Bayley said it was not necessary to set out the translation or copy of a document, although the original must be set out (*Zenobio* vs. *Aktell 6 T. R.*), (*Craft* vs. *Boyd*, 1 *Wms. Saunders.*) The rule of this Court as regards official translations alluded to by his learned friend was a fallacy; as the rule only said that no document shall be given in evidence without a translation signed by the Chief Translator, which had been done here, as the translation in the plaint was made and signed by Mr. Flynn, the Chief Translator, and the language of the plaint was "which being *correctly* translated," and the demurrer admitted that.

Chief Justice.—That may be good law in England, but it would not apply here, where the practice has been to have documents translated. Surely that document must be read in Court, which cannot be done without its being translated.

Mr. Bayley observed that it was not open to his learned friend to take that objection at that stage, it was quite premature; he now sought to traverse the point, and therefore he could not demur at the same time. The rule of pleadings in force in Bombay did not justify his learned friend to traverse and demur at the same time. The learned counsel next called the attention of the Court to what the action was for, viz., that it was for libel. The demurrer admitted the whole of the plaint, the introductory averments respecting the plaintiff and the peculiar sanctity in which as a Maharaj he was held by Brahmins and others,—the publication of the libel, that, the publication was a false, scandalous, defamatory and infamous libel, but Mr. Bayley contended that it was, to determine which he read the definition of Libel in *Wrongs and Remedies* by

Addison, p. 576. One of the eleven points of the demurrer was that the plaint did not impute any specific offence, but that was a frivolous objection, for an action of libel can lie, and the libeller is punishable for slandering another in his profession. After admitting on the face of the demurrer that the libel was published, and that it was false, scandalous &c., it was idle and frivolous for the defendant to rebut it, and say that it contained no offence. Mr. Bayley then said he had no desire to shrink from answering the objections raised on the ground of public policy, if the Court deemed it was necessary for him to do so.

Chief Justice.—I have simply the plaint in libel and the demurrer that the plaint is informally treated. I do not know how the question of public policy comes before me in this demurrer.

Mr. Bayley.—I understand your Lordship does not ask me to answer the points raised on ground of public policy.

Chief Justice.—So far as the grounds of special demurrer embrace those points, I am bound to give consideration to them, but I am not bound to entertain the question of public policy in a separate form. If Mr. Anstey had shewn any authority I would have been bound to hear it.

Mr. Bayley then being relieved of so much argument, proceeded to remark in answer to an objection, that however obscene and disagreeable might be the character of the evidence which would be brought forward at the trial, there was nothing to prevent the Court from hearing the action. He referred to the case of *Sudasundseu vs. Loknath Mully,* Morton's Cases, decided in the Supreme Court at Calcutta, which was an action of crim. con. between two Hindoo parties, and

the Court held that the action was sustainable; and in the case of *Queen* vs. *Dr. Newman*, 1 Vol. Dearsly's Crown Cases, there were twenty-two charges of libel brought against Dr. Achilli by Dr. Newman; one of the pleas was justification of every fact stated in the libel and though the circumstances of the case were of a most indecent character, it did not prevent the criminal information from being brought to trial, and the defendant was fined £ 100. Now what was the libel here? The chief part of it charged the plaintiff and his brother Maharajas with being in the habit of defiling the wives and daughters of their devotees. Looking at the improper character of the evidence which will come out, said Mr. Bayley, Dr. Newman's case is a precedent that such obscene cases can be heard. Referring to the first ground of objection in the demurrer, Mr. Bayley said, it was unnecessary to state more than this, that the plaintiff has a cause of action. It was said that the doctrines of the Hindu Religion should have been set out. In actions professedly grounded on custom it is not usual, to set out what the custom is. (*Wentworth on Pleading*, Edition of 1797, 1 Vol., p. 230). Bill of Exchange and Marine Polices derive their origin from the custom of merchants, and no custom used ever to be set out in declarations in such actions. In an action founded upon a custom of bankers, it has been held not necessary to set out the custom. Bellamy *vs.* Marjoribanks, 6 Exc. Supposing we were setting out a libel by setting out the doctrines of Christianity how could that be done? No two persons can agree as to what those doctrines are; it is possible to state them; who can say what the doctrines of Christian religion are; They are different in Rome, Geneva, England and Scotland. With the Hindoo religion the difficulty increases

a hundredfold. Supposing that the doctrines ought to be set out, how was that to be done with a religion which is so mysterious, which is older by centuries than the Christian Religion, and has so many ramifications; and how could an unfortunate barrister, whether an old practitioner here or a new arrival, set out what the Hindu religion is. None but Brahamins study it, and some thirty years are required for that purpose. The learned counsel would show that, according to the strict rules of law, it was not necessary to set out such matters in the plaint. He cited cases from *Stephens on Pleading* and passages from Comyn's Digest, shewing that it is not necessary to state what the law presumes. Irrespective of this, the learned counsel contended that the libel can be understood without the setting out of the doctrines, inasmuch as it charged the plaintiff with breaches of the moral law. The numerous cases cited by his learned friend to impeach the plaint of introductory averments, gave the Court but little assistance, and did not support the argument to the desired extent. The arguments founded upon by the other side upon the case of *Solomon vs. Wright*, are cut away by the case of *Lefann vs. Malcolmson*, in the House of Lords two years afterwards, wherein it is decided that though defamatory matter apply to a class, if the inuendo point to a particular person, that person can bring an action for libel. In the present case the libel unquestionably points to the class of Maharajas, and if the plaintiff satisfactorily shews that he was one of them, and that it applied to him, he can bring an action. The case of *Goldstein vs. Fox* and other cases cited by Mr. Anstey, are those of oral defamation or slander, and did not apply to a case of libel. The argument that the plaintiff and his sect

have no *locus standi*, and that they are not entitled to the protection at law, seemed to Mr. Bayley to be a strange conception of the law administered in this country.

Chief Justice.—The 3 and 4 William IV. puts that to rest, for there is a clause there which bestows upon the people here equal rights.

Mr. Bayley then went on to argue the objection that the plaintiff must be treated as an alien. He said that if any persons were to be treated as aliens, it must be he himself and his learned friend as foreigners in this land, and not the plaintiff, descended from the original inhabitants of India, who describes himself to be a liege subject of Her Majesty the Queen, and a resident in Bombay for a number of years. To shew how Her Majesty's Courts lend their assistance to foreigners, he cited the well known case of the *Emperor of Austria* vs. *Louis Kossuth*, decided in May last, reported 7 Jurist N. S. by V. C. Stuart and also R. *vs.* Peltier, where the libel was on Napoleon Buonaparte when First Consul, and R. *vs.* Lord George Gordon for a libel on the Queen of Spain. It had been urged that the denunciation of the conduct of the Maharajas, who under the cloak of religion, defiled the wives and daughters of their devotees, was not a libel. In answer to this, he (Mr. Bayley) need only say that the plaint spoke for itself, and that the argument was too premature, and not worthy the consideration of the Court at this stage of the proceedings, and he cited the case of *Thorley vs. The Earl of Kerry*, 4 Taunton, where the introductory averments were similar to the present case, and where the Earl had been charged with practising hypocrisy under the cloak of religion and that was held by the Courts of Queen's Bench

and Common Pleas to be a libel. Again it had been argued that there was no allegation in the plaint,—that abstinence from women was the profession of the Maharaj; but the learned counsel deemed it unnecessary to notice such a monstrous argument, which bore absurdity on the face of it, for abstinence from women is no man's profession, and much less in a climate like this, where the passions are warm, where children arrive at puberty at a much earlier age than in the cold countries, and are by Hindu law of age at 16. Again it was said that it was free to all people to cast imputation upon people in illegal profession and obnoxious to law; but he contended that the plaintiff has been in enjoyment of a legal profession, and the argument therefore bears contradiction on the face of it. There was no authority for Mr. Anstey saying that during the period the English have been in possession of Bombay there has been no case of this sort on record, for Morley's Digest bears evidence of many cases of actions of libel brought in the Zilla Sudder Courts. Even supposing that there are no precedents, that does not preclude plaintiff seeking redress for a grievance on the established principle of law, that where there is a wrong there is a remedy. *Ashley vs. White*; *Embrey vs. Owen 7 Exc.* Another argument was that the law of defamation in spiritual cases has not been granted to the Natives here, but (Mr. Bayley contended) this was the libel against the plaintiff, not in his spiritual capacity, but in his private character, and the mere fact of his being a Brahmin, a Maharaj, or a member of the sect of Wallabcharya, did not disentitle him to seek protection at law. If such a doctrine were allowed, no Brahmin in the land would be safe; he could be slandered and libelled with impunity, and re-

dress denied to him because he happened to be a spiritual person. The Institutes of Menu and other sacred books of the Hindus shew that a Brahmin was considered as a powerful Divinity. Another objection was that the words "improper conduct" are unknown to the English law; but the learned counsel denied that to be so, for if a libel is libellous without an inuendo, it can be rejected (cited several authorities).

Taking the whole article from beginning to end it was a libel upon the character of the plaintiff, and all that the Court had to do, was to determine whether the special points were allowable. If had been complained that no specific offence was attributed to the defendants, but Mr. Bayley urged that it was not necessary to lay a specific charge. The case of the Quakers, alluded to by his learned friend with regard to the discipline of the sect, was not applicable to this. The other complaint was that there was no allegation of malice, but he answered that that was unnecessary as malice is implied in the libel. It was said that the latter part of the article was only tangible as libel, but he would say that the whole of the article from beginning to end was so. It was not necessary to state how the plaintiff was disgraced by the libel. This was an article in a newspaper, and it was only necessary to set out the whole of the article, if as in this case the article was complete in itself. As to the translation being not official, he said it was quite correct, and bore the signature of the head translator of the Court. As to the clerical errors the learned counsel was not satisfied that there were any such errors in the copy of the plaint, although there might be some slight errors which inevitably occur in copies written by native clerks

imperfectly acquainted with the English language, and not a single certified copy that issued from the offices of the Master and Prothonotary that he had seen, had been free from them. If the argument were allowed, the omission of a dot to an "*i*" or a cross to a single "*t*" would be fatal. On the whole he submitted that the demurrer was frivolous, and should be dismissed with costs.

Mr. Anstey, in reply, said he bowed to the decision of his Lordship overruling his objection raised on the ground of public policy, and therefore confined his observations to the point of special demurrer. Before entering upon the arguments of his learned friend, he read the clause of the 3 and 4 William IV., to show that his Lordship was right in principle, though the *modus operandi* was different. He then proceeded to say on authority, that without a good inducement the inuendo is nothing and that his arguments had turned not upon the formal passages in the plaint, but upon material passages. From the plaint it did not appear in what way the defendants were guilty of the alleged offence, and which of the two defendants, on record. It was material to know which of them committed the alleged grievance, because one was a Parsee and the other a Hindu, and the former might claim more freedom of criticism than the latter would, and *vice-versa.* It was not stated in what their offence consisted, and here was nothing specifically charged. He illustrated his argument by the suppositious case of a Christian bringing an action against another Christian, in which case the Court would take it as matters affecting the Christian religion. The morality of the West is known to the law, while that of the East is left very vague, and therefore it is necessary that the imputations on the moral character of the people

of the latter must be specified. If the doctrine that no such specification was required was adopted, there would be no end to the inconvenience and difficulty in which the Court would be thereby involved, for in the eyes of the Maharaj the defendants might be guilty of blasphemy in taking his godly name in vain in such a manner. It has been urged that it is not necessary to allege a custom in pleading, but Mr. Anstey contended that where parties sue on a case involving custom, that custom must be alleged, though it might not be set out at length. The plaintiff out to have stated that chastity is a virture according to the tenets of his sect. The argument that it would be difficult and not safe for a pleader to set out the doctrine in case of a Christian clergyman, or ground that no Christians agree on it, applied, said Mr. Anstey, with *reversed* force to the case of Hindus, where from their religion, or rather many religions, it was necessary that there, should be averments of the doctrine. The Court is not the proper tribunal to determine a suit where a self-styled god or Maharaj seeks to enforce the discipline of his sect. He never denied the difference between a written and an oral slander as to the liability of the slanderer, but what he said was that both written and unwritten defamation agree in this—if it has been uttered or published concerning a man in his profession, then it becomes necessary for him by clear averment to connect that slander not only with the special damages, but with the conduct of his profession. The Maharaj had chosen to declare that he had been slandered in his profession, but he ought to have shewn the connection between the imputation and the profession, and that he was liable to a censure from his superiors. Suppose the Court was sitting in Madras to try an action of *crim. con.* among

the Nairs, a sect on the Malabar Coast, where the custom prevails of two or three brothers having one wife in common, would it not be necessary for the Court then to enquire what religion the parties belonged to, and, under an Act of Parliament, to respect their usages. This Court could not entertain an action for crim. con. where the parties are Hindus, because by the Hindu law the offence is made subject to a criminal jurisdiction. The very book—Morley's Digest—alluded to on the other side, is full of cases in which the Zilla Courts have refused to entertain questions of caste and those partaking of a spiritual character. It was urged that the malice must be presumed, but he (Mr. Anstey) said there was nothing in the alleged libel to warrant the Court in presuming malice. The alleged libel amounted merely to this. A book has been published since many years by one Goculnathjee Maharaj promulgating a doctrine, the plaintiff followed suit, and, in commenting on the doctrine, the defendants used terms of reproach within the bounds of legitimate criticism. In reviewing these books, the defendants denounced their doctrines, that is the true construction of the alleged libel, and Mr. Anstey said this was no libel. The whole of the matter in the libel is speculative, with the exception of a tangible point which might be observed from looking to the inuendo. It may be divided into two parts, one impugning the orthodoxy of the doctrines of the sect, and the other impugning their offensive and immoral practices, and the learned counsel contended that it was a fair and legitimate criticism of the sect. The criticism referred to a historical fact, viz., the history of the Hindu religion from the 16th century, and to the philosophy of the doctrines of a sect, and on the authority of opinions expressed by Lord Ellin-

borough and Lord Campbell, the learned counsel maintained that such criticism could not be held a libel. He believed that his case was not in the least affected by the arguments of his learned friend, and he fully relied on the eleven grounds of the demurrer.

Thursday, 18th July 1861.

THE CHIEF JUSTICE this day delivered his judgment to the following effect:—It was open to the defendant under the Statute to raise any question of general demurrer besides those specified, but by the Court's rule No. 90 he is confined to such special grounds as are stated. The defendant was limited to the eleven grounds of special demurrer exhibited by him, and it was with these alone the Court had now to deal. By the rules of pleading irrelevant matter might be rejected and cannot be made ground of special demurrer. The principle *Utile per inutile non vitiatur* was applicable to all those grounds of demurrer.

Now as to the first ground of the special demurrer, which is that there was no allegation that improper conduct is contrary to the doctrines of Vallabhacharya, &c., his Lordship said that this portion of the plaint containing the averment of character was clearly to be held mere surplusage by Chitty (Vol. 2.) from whom the precedent is evidently taken (Styles 11 Precedent I. M. S.), so the words "By means whereof," &c. where shewn to be not traversable according to the authorities in the same book. No special demurrer could there-

fore lie on this ground, and consequently in His Lordship's opinion the first ground failed. His Lordship would not hold it necessary for plaintiff to make the averments which the special demurrer insisted he ought to have made, for what is meant by "heterodoxy" appears from the libel itself where that word occurs and where it also, in His Lordship's opinion, sufficiently indicates what it relates to. It is clearly stated there that certain sects are heterodox by the Hindu Shastras or sacred books, and it is admitted that plaintiff is one of that sect. On that ground alone His Lordship would not allow this point of the special demurrer. This was made abundantly clear by the libel which goes on very much to identify the "heterodoxy" with "heresy."

The second ground of the demurrer that there was no allegation that improper conduct was contrary to the religion of the sect, &c., must be overruled on the same principle. A great deal was said and it was very much insisted on that this was a libel against the Maharaj as a high priest alone. Now that was a mistake. Looking to the libel itself it is charged against the plaintiff, as a Maharaj, as a Brahmin and as a member of the said sect of Vallabhacharya. The case of *May vs. Brown*, 3 B. and C. 138, is a direct authority to shew that when a libel is of and concerning the plaintiff in various characters, it is a libel against him individually, so that it appeared to the Court, this was a libel against the plaintiff in his individual capacity, segregated from his character of priest. (*Lewis* vs. *Walter* 3 B. and C. *in notes* to *May* vs. *Brown*.) If the Court were to hold the plaintiff bound to make such an averment as was here demanded, that would be to hold him *prima facie* guilty of the conduct imputed to him. A Hindu is

not more bound to do so than an European. This Court is bound to treat both upon an equality and to administer the same law to every one. This Court has no judicial cognisance of any peculiarities of moral conduct if their are such, but must leave the defendant to come in and allege them in his own defence by way of plea. The plaintiff is not bound to anticipate what is merely matter of defence.

As to the third cause of the demurrer the same rule applied which his Lordship had applied to the first two. Also this usage was sufficiently pleaded for the purpose of the inducement where the same strictness is not required as in the rest of the plaint.

For the same reasons his Lordship overruled the fourth cause of the demurrer which stated that there was no allegation that it was contrary to the practice of the Maharajas to enjoy the tender maidens, wives, and daughters of their devotees. His Lordship did not think that the plaintiff was bound to exculpate himself from these imputations.

The fifth ground, which alleged that no specific offence was charged, arose in this way. There are two defendants named in the plaint; yet throughout, the word "defendant" in the singular number was used. There was a rule no doubt that accuracy must be observed, and a case in point (*Walford* vs. *Authony*, 8 Bingh) was adduced by Mr. Anstey. His Lordship was reluctantly obliged to allow that cause of demurrer; it was, however a small point.

As to the sixth cause of the demurrer, the observations his Lordship had already made, applied to it and it must be overruled. The

"heterodox opinions" are sufficiently defined by the libel and so also the words "offences and improper conduct," because these are levelled at certain specific acts charged to have been done by the plaintiff.

The seventh cause which complained of certain expressions being insensible and ambiguous, was also overruled, as the expressions clearly appeared in the libel.

The eighth cause stated that the several inuendoes alleging that the plaintiff and other Maharajas are guilty of rascality and shameful conduct, and defile the wives and daughters of their devotees and other Hindus by criminal intercourse with them, &c., are not warranted by the words of the libel, nor supported by any inducement or introductory averment to which the inuendoes refer. This cause, his Lordship said, forced on the Court the consideration of what the libel itself was. His Lordship was of opinion that the learned counsel (Mr. Anstey) for the defendants had very properly divided the libel into opinions and facts. Now, if on looking to this part of the libel the Court found any one of the inuendoes not supported by the libel, it would be the duty of the Court to allow the demurrer as to that. His Lordship had attentively gone through them all and must say that it did appear to him that the first part of the article was an attempt to argue upon historical facts brought to bear upon the opinions of a particular class of people at the present day. It is lawful for any person to take up the history or the historical opinions of any sect or class, and to reason upon them, and if he fairly and honestly produces opinions not in unison with what others would form, yet if there be no malice he would not be guilty of libel. Now thus

far it appeared to his Lordship that the libel was levelled against this sect,—its opinions,—and the writings of its members. The reasoning and logic might not be perfect, but so far there was nothing to shew personal malice against the plaintiff. (Reading a portion of the article) His Lordship remarked that that was arguing in a historical point of view,—a comparison of the ancient Hindu religion with the new. The words were coarse and vulgar, but his Lordship was not prepared to say that they were libellous as against the plaintiff. His Lordship after alluding to the case of *Lefanu* vs. *Malcolmson* cited by the plaintiff's counsel, said he knew of no authority for holding that any one sect of hundreds, thousands, or millions of people accused (because of their members) of subtlety, immorality, rascality, immodesty, &c., has a right to bring his action on that ground as for a libel on himself. The rest of the libel, his Lordship observed, was of a different character. In it the plaintiff was singled out and apostrophised, and was charged with acts alleged to be committed by himself. (Reading the last portion of the article). That, it appeared to his Lordship, was a direct charge against the existing body of Maharajas, it points out the plaintiff as one of them, and it tells him to desist. The two grounds charged here as libellous come within the case of *Tabail* vs. *Tepper* before Lord Ellenborough, which was cited in argument. Again in *Carr* vs. *Hood* that Chief Justice held the same doctrine. This after part of the libel, however, His Lordship said, would come before the Court on future occasion, and he would therefore express no further opinion on it now. Then there was another innuendo which relates to "as long as the preceptors of religion &c," but the Maharajas are not stated in the inducement to be "preceptors of religion."

Therefore according to the rules of pleading, the plaintiff had no right to sustain this inuendo, and this cause of the demurrer, His Lordship said, must be allowed.

As to the ninth ground of demurrer, it had been abandoned by Mr. Anstey, and His Lordship merely stated therefore that the learned counsel for the plaintiff was wrong in saying that in England a translation is unnecessary (*Zenobio* vs. *Axtill* 6 T. R.) It is a rule of common sense and of law.

As to the tenth ground of the demurrer, if the clerical errors were considerable, the Court would not yield to them. But they did not appear considerable, and as some must occur in this country, the point taken must be overruled.

As to the eleventh and last ground referring to omissions of books &c., His Lordship thought it must be overruled. The office of a special demurrer is to point out to the plaintiff what amendment he should make in his pleading. Now this the defendant had not done, but his Lordship did not think that either of those books was at all necessary to be further set forth.

The special demurrer was on the fifth and eighth points allowed.

Mr. Bayley.—As we have virtually succeeded we ought to have the costs.

Chief Justice.—I cannot allow that. There is no authority in favour of giving costs to a plaintiff of a demurrer allowed.

Mr. Bayley asked leave to amend the plaint on the fifth and eighth points.

Chief Justice.—The plaintiff will have liberty to amend, on amending defendant's copy.

The Defendants to have a fortnight to plead.

THE PLEAS SET FORTH BY THE DEFENDANTS.

The defendants, by Samuel Lawford Acland, their Attorney, say that they are not nor is either of them guilty of the said supposed grievances above laid to their charge or any or either of the same or any part thereof in manner and form as by the plaintiff above in that behalf alleged, and of this the defendants put themselves upon the Court, &c.

And for a second plea in this behalf the defendants say that the persons in the said plaint alleged to be called Maharajas were not nor are the preceptors of the Hindu religion therein mentioned in manner and form as by the plaintiff above in that behalf alleged and of this the defendants put themselves upon the Court, &c.

And for a third plea in this behalf the defendants say that the said persons were not nor are the chiefs or heads of the class of Hindus in the said plaint alleged to be called Brahmins in manner and form as by the plaintiff above in that behalf alleged and of this the defendants put themselves upon the Court, &c.

And for a fourth plea in this behalf to the said plaint the defendants say that the plaintiff hath not always been nor is a Hindu High Priest of high caste or a preceptor of the Hindu religion in manner and form as by the plaintiff above in that behalf alleged and of this the defendants put themselves upon the Court, &c.

And for a fifth plea in this behalf the defendants say that the supposed religious sect by the said plaint alleged to be called the sect of *Vallabacharya* or the sect of the *Maharajas*, and of which sect the plaintiff is by the same plaint

alleged to be a member is a sect of persons holding professing and observing religious opinions and practices of a very modern date to wit of the date of the 15th century of the Christian Era, and altogether repugnant to and at variance with the religious doctrines and practices of the ancient Hindu religion in the introductory part of the said plaint mentioned, and the usage custom and practice therein also mentioned, without this that the plaintiff is a member of an ancient Hindu religious sect in manner and form as by him the plaintiff above in that behalf alleged and of this the defendants put themselves upon the Court, &c.

And for a sixth plea in this behalf the defendants say that so much of the alleged libel as is next hereinafter set forth in the Gujerati language and character that is to say (હે) મહારાજા, તે ટીકા પ્રમાણે ચાલીને પોતાના સેવકની વહુ દીકરીઓને બગાડો છો તેથી હાથ ઉઠાવો અને રસ મંડળી જેવી અનીતીને એકદમ નાશ પમાડો being literally and accurately translated into the English language was and is to the tenor and effect following that is to say "(Oh) Maharajas acting up to that commentary, defiling the wives and daughters of your devotees desist from that and destroy at once immorality such as that of the company at the *Ras festival*" without this that the said alleged libel being duly or correctly translated by James Flynn, Esquire, the sworm Chief Translator of this Honorable Court, into the English language was or is according to the tenor in the said plaint alleged in manner and form as thereby alleged, and of this the defendants put themselves upon the Court, &c.

And for a seventh plea to the said plaint as to the printing and publishing and causing to be printed and published the following part of the

said supposed libel that is to say [here follows a great portion of the libel in the Gujrati language]. Which words are by the said plaint alleged and surmised to be therein duly and correctly translated into the *English* language, and to be according to the tenor following that is to say [here follows English translation of the above portion of the libel]. The defendants say that before and at the time of the committing the said supposed grievances there was at Bombay and at divers other places in India a certain sect of Hindus called the sect of *Vallabacharya* and also called *Vaishnavas* and in the said supposed libel, and also in the said plaint and hereinbefore named and holding professing and pratctising certain opinions as to religions and morals opposed to the ancient religious and moral laws of the Hindus, and more particularly to such of the said religious and moral laws as prescribe to the Hindus, the observance of piety towards their Gods, and of chastity, sobriety and virtue towards and amongst themselves for that, whereas by the said last mentioned laws all good and true Hindus are bound to believe and to hold that the Gods and their laws are eternal and unchangeable and that the Godhead is not capable of being procreated or begotten by man, and that it is a wicked and impious thing for a mere man to pretend to be a God or to be capable of begetting a God or to practise impostures in that behalf on any people, and that it is altogether against religion and morality for maidens before marriage to have carnal intercourse with any man, or for wives to have such intercourse with any man but their own husbands, yet nevertheless before and at the time aforesaid, the said sect then did hold, profess, and practise, amongst other impious, wicked, and antisocial opinions, the opinions following, that is to

say—that the leaders of the said sect and the naturally begotten and adopted sons of such leaders are the Incarnations of the Gods Brahma and Kristna and themselves Gods and are and ought to be worshipped implicitly obeyed and served as Gods by the members of the said sect with all the minds, bodies, and properties of such sectaries, and that the neglect of any such to perform the said worship implicit obedience and service, is a sin of the gravest character and that it is the duty of the female members in particular of the said sect to love the said leaders with adulterine love and sensual lust and perform the said worship, implicit obedience and service with their bodies by submitting to have carnal intercourse [with any of the said leaders] whensoever called upon or required by any of the latter so to do, albeit such female members are or may be unmarried maidens or wives of other men and in no wise married or betrothed in marriage to the said leaders; and the defendants aver that before and at the time of the committing of the said grievances, the said leaders of the said sect pretend to be such Incarnations and Gods as aforesaid and to have such capacity as aforesaid, and entitled to be so worshipped, implicitly obeyed, and served as aforesaid, and permitted or sanctioned the performance in manner aforesaid of such worship implicit obedience and service, thereby practising great impostures on their said sectaries and on the Hindu people in that behalf. And the defendants aver that before and at the time of the committing of the said supposed grievances the leaders of the said sect were dispersed over the Presidency of Bombay and other parts of India and were in number about 70 in all and were called indiscriminately *Gurus*, *Acharyas*, *Gossains*, *Vandravun Gomais* and also *Maharajas* and in fact

were the said Maharajas in the said supposed libel and plaint and hereinbefore mentioned, and that the plaintiff was one of the said Maharajas, and the defendants aver that in and by the religious books of and received as of authority by and among the said sect and in particular in and by a certain book called "Vitha lesha Ratna Viverna," and the commentary thereon, every such leader is described as the husband of many women (to wit his devotees) even although himself may have no wife or only one wife and as the ocean of wanton amorous sport with many women (which is the sea of licentiousness in the said supposed libel, and in the plaint hereinbefore mentioned) and also as one whose sole aim is wanton amorous sport with many women; And the defendants aver that before and at the time of the committing of the said supposed grievances the said religious books of and then received by the said sect contained many passages of the like indecent and immoral character, and whereby in direct terms adultery and fornication are encouraged and commended, and also whereby the said sectaries were then taught and instructed to gratify their passions in this life, and they do so gratify them, and especially at *Ras festival* in the said supposed libel and plaint mentioned as the surest way of pleasing the Gods, and procuring eternal happiness in a future life and other false and heretical and immoral opinions were then inculcated without any opposition from the said leaders and with their connivance and acquiescence, And in particular in and by one of the said books to wit the said commentary of the said Gokulnathjee in the said supposed libel and plaint, and hereinbefore respectively mentioned and also in and by another of the said books to wit called "*Sidhant Rahasya*" and also in and by another of the said books, to wit called "Kavi Charitra," and in and

by others of the said books it is mentioned and professed to the effect that among the principal laws, doctrines and commandments of the said sect of Valabhacharya were the following, that is to say—to secure the firm support of some one of the said leaders and to worship the God in him incarnate are the only principal means of the deliverance of the soul from the body and the salvation thereof, and the re absorption thereof into the Divine essence, and that it is the duty of every member of the said sect to forsake the sense of shame with reference to public opinion and the commandments of the said sacred books and laws of the Hindus and to be suppliants to some of such leaders for salvation, and to be humble before him and to belive that he the said member is not a man, but a woman servant of such leader, and to praise always his—the said leader's virtues and the greatness of his name, and to obey his commands and to put faith in all his acts and words and to be ever associate unto his service and to consider himself the said sectary and his wife and children and all that is his as the property of his said leader and to offer them and present every thing and even the said sectary's wives and children to the said leader for his enjoyment and use and for the transformation thereof into the nature of the great God Brahma before he the said sectary shall himself presume to use or enjoy the same, and that by acting otherwise the said sectary shall and will become guilty of sin, and incur the Divine punishments appointed to the same, And the defendants aver that before and at the time aforesaid in and by others of the said books of and received by the said sect as aforesaid to wit one book called "Chorasi Vaishnava-Ki-Barta" and also to wit another book called Rus Rus, and also to wit another book called "Chaturshloki Bhagvat," and to wit "an-

other book called Pushti Parvha Maryada Tika," and to wit another book called "Svadharma Vardhak Annay Samshay chedak," (and which last mentioned book was and is printed, published, and circulated in Bombay aforesaid by and under the authority of the plaintiff himself, and by and under the authority of a certain society of the said sect for the propagation of the doctrines of the same sect to wit a society then and now called to wit the Vaishnav Dharma Prasarak of which Society the plaintiff was and is a member and also founder, and president,) and also in and by other books it was professed, stated, and maintained to the effect that it is the creed of the said sect that God of whom the said leaders so pretend as aforesaid to be the Incarnations doth abide in the houses of and in union with the members thereof by or with adulterine love like unto that in the excessive affection whereof an adulteress makes abandonment of body, mind, and wealth, to her adulterer. And that when God is displeased with any sectary his or her said leader saves him from that displeasure of God but that when the said leader is displeased with the said sectary none can save him or her from that displeasure of the leader, and that therefore the said sectary ought to serve the said leader with his or her body and wealth and please the leader aforesaid, and also ought necessarily to worship in an equal manner the said leader and God only and that he or she can only by worshipping such leader go to the heaven appointed as a reward for the worship of God and that the said leaders are manifestly God, the excellent Being himself. And that the punishment of him or her who holds his or her leader and God himself to be different or distinct beings shall be that of being born again in the condition of a bird called *Sichana*, and the punish-

ment of him or her who sits with legs folded in front before his or her leader shall be that of being born again in the condition of a serpent, and the punishment of him or her who displays his or her learning before his or her leader shall be that of being thrice again born dumb and thrice again born in the condition of a dog or ass, and that the punishment of him or her who displays activity before his or her leader shall be that of being born again in the condition of a bird called *Jarákh* and the punishment of him or her who shows the soles of his or her feet to his or her leader shall be that of being born again and for ten years remaining in the condition of a serpent and the punishment of him or her who disobeys the order of such leader shall be the going to Asepatra and other dreadful hells, and the forfeiture of all merit before God and that the punishment of him or her who performs worship without seeing and paying his or her respects to his or her leader shall be the sterility of such worship, and that the punishment of him or her who divulges the secrets of his or her leader or of God shall be that of being thrice again born in the condition of dog, and that in the *Kalliyug* in the said supposed libel and plaint and hereinbefore mentioned there is no means of salvation similar to worship to wit the worship of one of the said leaders and therefore that the said sectaries should regard each his or her leader as God nay and as a being greater than God and that all people and all things are God's own and that consequently the sin of adultery and dishonesty does not affect him (to wit incarnate as aforesaid) but is ordained only for the world to wit the followers of the said sect, and that if any persons shall say that it is sinful to entertain adulterine love towards God, such persons are ignorant fools; for in God all relations abide and the two species

of man and woman do not exist, but that both are the spirit of God, and that consequently when he (to wit incarnate as aforesaid) commits adultery, he is at play with his own spirit and in that no sin is incurred either by God to wit incarnate in the said leaders or any of them or by this world to wit the female members aforesaid and that God himself had granted to the Veds to wit religious preceptors of the Hindus at their request permission to entertain adulterine love for the God Krishna to wit the God of whom the said leaders pretend to be Incarnations as aforesaid, and in the form of shepherdesses to be adulterously and carnally known and enjoyed by the said God and that in like manner at the request of 16,000 sages who were enamoured of another God, the same became and were in the forms of shepherdesses carnally known and enjoyed by the said God to wit incarnate as aforesaid, and all the shepherdesses aforesaid loved God as their adulterer and he became an adulterer and made them happy, and that God to wit incarnate as aforesaid is all form and that he is in the form of father and of husband and of son and of adulterer and sustaining the life of devotees, by adulterine love, and that they who say that this is sin are ignorant and not devotees, but wishing for the love of hell, and as it were asses feeding on the dunghill but knowing not the pleasures of the garden and to whom to eat sugar is death and to feed on the rubbish of dunghills is life; And that by experience it is clearly known that there is no love in any thing like adulterine love for that by day and night and amid the engagements of the adulteress in her household work, her mind is directed to the object of meeting her adulterer and for that during her separation from him and by reason thereof, she loaths her food and precious attire and dies of excessive

grief. And that they are fools who say that such love is loathsome to wit before God. And these, the defendants aver that the several matters aforesaid, are more fully and at large set forth in the said several books of and received by the said sect and that they crave leave to refer to the same books respectively when produced and shewn unto this Honorable Court. And the defendants aver that the said sect is in the premises according to the said ancient Hindu laws and religion a new heresy and disorder and altogether a false and heretical sect and withal a sect delusive to simple people and that in particular it is a heresy, a sham and a delusion and a doctrine not written in any *ved* or *puran* or *shastra* or sacred books of the said Hindus or law book a saforesaid that one's married wife should be made over to a Maharaj or to a religious preceptor before being enjoyed or that one's daughter should be so made over. But the defendants further say that nevertheless it is a necessary consequence of the aforesaid commentary of the said Goculnathjee, so received by the said sect as aforesaid that before a member thereof has enjoyed his own married wife, he should make her over to his leader to wit to the Maharaj and that he the said member should also make over to him his said member's sons and daughters and that after having got married and before having himself enjoyed his wife, he the said member should make an offering of her to the said leader to wit the Maharaja aforesaid; after which he the said member should apply her to his the said member's own use; and the defendants aver that by reason of the said heresy, sham and delusion they were as orthodox believers in religion and morality seized with disgust and indignation and that they were and are of opinion that there can be no greater heresy or deceit than this, to blind people and throw

dust into their eyes and in the name and under the pretence of religion to assert the right of the said leaders to enjoy the tender maidens and wives and daughters of the people so blinded as aforesaid, and the defendants aver that not only the said Gôculnathjee by his heavy composed commentary abovementioned, but also the composers and compilers of all the said other books had before the committing of the said supposed grievances thereby attached to the said Vaishnava pursuasion to wit the said sect a great blot of ink and reproach, and that in acting according or up to the said commentary the Maharajas who did so act were necessarily guilty of defiling the wives and daughters of their devotees, and themselves appear to be immersed in the sea of licentiousness, and by so appearing and so long as they do so appear and do not desist from so acting up to that commentary for so long they necessarily shall not be competent to convey religious exhortation nor can give religious admonition and propagate their own religious faith. And the defendants aver that before and at the time of the committing of the said grievances, the said Maharajas were commonly worshipped and obeyed and served as Gods and Incarnations of the great God Brahma by their male and female devotees in the said supposed libel and plaint and hereinbefore mentioned with such adulterine love and in manner and form as in and by the said books of and received by the said sect as taught and inculcated and as hereinbefore in that behalf is set forth, and that thereby and in consequence thereof great crimes and scandals were committed and occasioned, and great discredit and dissertion brought inon and into the said sect. And in particular the defendants aver that it was then the common practice and then commonly and as well in the said sect as without the same, reputed and

believed to be the general practice of, by and for the most part of, the said Maharajas to act according to the aforesaid teachings and instructions of the said commentary and such other books as aforesaid, and to obtain and have in right of their said pretended Incarnations and godships and in the name of the said religion carnal intercourse with and to defile their said female devotees being such wives or daughters as aforesaid. And the defendants further aver that according to the Hindu Laws and religion aforesaid before and at the time of the committing of the said supposed grievances it was and still is unlawful and criminal for any person to handle the breasts of any woman not being his wife or lawful concubine or to throw goolal upon the same or to take indecent liberties with her person, and that such offences then were and still are by the said law and religion accounted and deemed to amount to adultery, and that nevertheless it was before and at the time of the committing of the said supposed grievances and still is the practice of the said Maharajas publicly as well as privately to lay their hands upon and hold and handle the breasts of the female devotees of their said sect albeit neither wives nor lawful concubines of them the said Maharajas and to cast and throw goolal upon the breasts of the said devotees. And the defendants aver that before the time of the committing of the said supposed grievances, the plaintiff himself then being such Maharaj as aforesaid confessed and declared to two merchants of the said sect as the fact was that adultery was then and theretofore practised among the said Maharajas thereof, and he then further alleged that they had been corrupted thereunto and to other evil manners through or by reason of their having come into contact and intimacy with the pilgrims who eschew marriage and are called Varkats.

And the defendants aver that shortly before the committing of the said supposed grievances it had been also recently stated and declared by a Maharaj of high station in the said sect to wit one Jevanjee Maharaj to drivers respectable members of the said sect, that he the said Maharaj was unable to prevent his said brothers from committing adultery or fornication with the said female devotees of the said sect. And the defendants aver that both before and at the time of the committing of the said supposed grievances the licentiousness of many of the said Maharajas was a matter of notoriety in the said sect and generally among the said followers and had frequently been denounced by some of the latter in Guzerathee pamphlets, newspapers, handbills and placards and by other means of publication amongst the natives of this presidency, and that in particular at the end of the Christian year 1855 the Bhatias, who then were members of the said sect incensed at the number of instances of the defilement of women of the said sect by Maharajas at the temples where and on the occasions when the said women were assembled for the purpose of worshipping the Gods and Maharajas aforesaid in conformity with the teachings aforesaid, convened and met together in a public meeting and there at came to a resolution and did resolve to the effect that for the future none of their wives or daughters should be ever allowed to resort to the said temples or to the said Maharajas for worship except at and during certain stated hours in the morning at and during which hours they the said Maharajas would to the knowledge of the said Bhattias be entirely occupied with certain daily exercises of their religious retical, insomuch that they would be then wholly unable to have any intercourse with any of the women last aforesaid, and the de-

fendants aver that the plaintiff himself as such Maharajas aforesaid some months before the time of the committing of the said supposed grievances did, in the course of a conversation with a Bhattia of the said sect, assert and undertake the defence of the adulterous debauched conduct of the said Maharajas or to excuse the same, and did then and to that end profess and maintain to the said last mentioned Bhattia in effect that there was no crime or sin in the practice of adultery, and that on the contrary the same was wholesome in itself and effectual to sustain and increase the vigor and strength of man, and that he the plaintiff had so found and known the said practice in fact to be from his own experience thereof as well as from that of the athletics of the Court of the Gayakwar each of whom as the plaintiff then asserted was in the habit of keeping four or five women as concubines and of preparing themselves for a wrestling or other athletic exercise by a preliminary coition with one or more of the women last aforesaid. And the plaintiff then also defended and extolled promiscuous coition and professed that by the enjoyment of divers females the blood of the man enjoying the same becomes and is greatly heightened and improved. And these defendants further aver that before and at the time of the committing of the said grievances the plaintiff was commonly reputed and known in Bombay and in Surat and elsewhere in India to be addicted to the society of women of loose and light life and to be himself a man of debauched morals and to be in the habit of receiving women and amongst others female devotees of the said sect into his private apartment and to chambering and wantonness and to taking indecent liberties with women of his said sect but not being his wives or lawful concubines, and in parti-

cular that about 8 or 10 years before the committing of the said supposed grievances to wit in a certain room at Bedt in the Presidency of Bombay aforesaid in which room certain of the said women then were, the plaintiff scattered, threw and cast upon their persons *goolal* until the said room was filled and darkened with the same, and that he the plaintiff then in the said room so thereby darkened as aforesaid took indecent liberties with a young person there being one of the said women of his sect but not being his wife or lawful concubine to an extent which by Hindu Law is deemed to be and in fact is highly criminal and in fact equivalent and tantamount to the crime of adultery to wit the indecent liberty of laying hold with his hands her breasts and handling the same, and further in the course of the Christian year 1860 the plaintiff did in a certain conversation to wit at Bombay aforesaid with a certain member of his said sect confess and admit the premises in this averment set forth, and further that in the course of the same year last aforesaid the plaintiff did retire into and for the space of one hour or thereabouts remain in his private apartment to wit at Bombay aforesaid alone with a certain female of his said sect but not being his wife or lawful concubine and then and there have carnal intercourse with her. And that on another occasion in the course of the Christian year 1860 before the committing of the said alleged grievances the plaintiff in his private apartment to wit at Bombay aforesaid had carnal intercourse with a female of his said sect and not being a wife or lawful concubine of him the plaintiff. And lastly that within the course of the last year and before the committing of the said supposed grievances the plaintiff became and was by reason of his debauched conduct

affected with a certain disease called the Great or French Pox otherwise the venereal disease. And the defendants aver that the defendant Karsandass Mooljee was before and at the time of the committing of said supposed grievances a member of the said sect and that being such member thereof and being greatly zealous for the honor and well being thereof and much affected and grieved by reason of the crimes and scandals aforesaid and anxious to promote a reform of the said sect and of its said leaders in the premises, he then being the editor of the newspaper mentioned in the said plaint, and in which the said supposed libel is by the said plaint alleged to have been published did cause and procure to be printed and published by the defendant Nanabhoy Rustomjee Ranneenah therein certain articles and writings which were by him the first named defendant designed to promote and which did in fact promote a reformation of the said sect in the premises amongst other matters. And the defendants further aver that before and at the time of the committing of the said supposed grievances the plaintiff had commenced the composing, printing, publishing, and issuing among the members of the said sect of a certain small Guzerati book or work styled or named the "Swadharma Vurdhuk unnay Samshay Chedak" and also certain papers in another Guzerati newspaper to wit called the *Chabook* for the purpose of assisting, defending, and maintaining, and in fact the plaintiff did in and by the said book, newspapers, and papers respectively assert, defend, and maintain the cause of them the said Maharajas in the premises and the truth of the doctrines of the said sect and the morality thereof and of the said Maharajas and in a portion to wit in the first number of the said a small Guzerati

book or work the plaintiff by an article or essay therein by him inserted or caused so to be publicly notified to the readers of his said small book or work to the effect that any person who was or might become or be desirous of entering into any controversy with him the plaintiff on any subject must enter into the same accordingly and that any Hindu must be considered to be a dishonest person who will or doth not write in accordance with the doctrines of the Hindu religion to wit the ancient Hindu religion aforesaid. And that the plaintiff before the time of the committing of the said supposed grievances had also in his said book or work caused to be printed and published a profession and declaration on his part to the effect that it was the doctrine of the said sect and of the plaintiff as such Maharaj thereof as aforesaid, that the said sect ought to lay aside and act in contravention of the said Veds being sacred books of the said Hindus and containing the said laws of the said ancient Hindu religion as aforesaid. And that before the committing of the said supposed grievances to wit on the 29th day of September in the Christian year 1860 the plaintiff in and by the said newspaper called the *Chabook* caused to be printed and published a statement or declaration on his the plaintiff's part to the effect that in the same way as some one goes from the gates of the Fort (to wit of Bombay aforesaid) to proceed to Walkeshwar and some one from the same Fort to Byculla so exactly the original courses of the said Ved and the said Purans in the said supposed Libel and plaint and hereinbefore mentioned and wherein the said ancient religious laws of the said Hindus are contained having gone forward had diverged into different ways to wit ways of a different riligion and of a different morality from the ancient Hindu religion and mora-

lity. And the defendants aver that the said last mentioned, publications or any or either of them in no wise exculpated the plaintiff in the premises but on the contrary confirmed the said repute and notoriety of his immorality and proved him and the said other Maharajas to be heretics from the said ancient religion and morality. And the defendants say that it is true as stated in the said supposed libel that no other Hindu sectaries have ever perpetrated such shamlessness, subtlety, immodesty, rascality, and deceit as have the said Maharajas, and that they by their practices aforesaid thrown dust in to the eyes of simple people and that the said Maharajas have written in their books about enjoying the tender maidens, the people's wives and daughters and have enjoyed them accordingly, and that great flames of zeal have sprung up within the hearts of the defendants thereat, and that the defendants have had to grieve over their Hindu friends and the weak powers of reflection of those friends, and that the plaintiff's ancestors have scattered the dust of falsehood in the eyes of simple people and thereby made them blind, and that if the plaintiff wishes to propagate or spread abroad religion he ought personally to adopt a virtuous course of conduct to admonish the said other Maharajas to do the same. Wherefore they the defendants published and caused and procured to be published the said supposed libellous matter in the introductory part of this Plea set forth as they lawfully might for the causes aforesaid and this the defendants are ready to verify, &c.

8th. And for a eighth Plea in this behalf the defendants say that the said supposed libel and all and every statements and matters therein alleged is and are true in substance and effect,

wherefore they the defendants published and caused and procured to be published the said supposed libel or they lawfully might for the cause aforesaid and this the defendants are ready to verify, &c

15th August 1861.

THE CONSPIRACY CASE ARISING OUT OF THE PLEAS PUT IN BY THE DEFENDANTS.

(Soon after the above pleas were put in by the defendants, Parbhoodass, the manager of the Maharaja's case, obtained a copy of them, and visited several Bhattias, and informed them that if the pleas put in by the defendants were proved, Jadunathjee Maharaja would lose the case. In consequence of this, several Bhattias held three or four private meetings, in the last of which it was resolved that the whole Bhattia caste should be invited to subscribe their signatures to a document intended to frustrate the intentions of the defendants. In pursuance of this resolution, a general meeting of the Bhattia community was held in the Mahajan oart, close to the Elphinstone Institution on 6th September 1861. In this meeting it was resolved that whoever gave evidence against the Maharaj, should be called to account according to the rules of the caste. As this resolution was illegal, the Editor of the *Satya Prakash* charged nine Bhattias, who took a leading part in effecting the above resolution, with *conspiracy*. The preliminary examination of this charge, com-

menced on the 11th of September 1861, in the Fort Police Court, before W. Crawford, Esquire, Senior Magistrate, and terminated on the 16th November 1861, after being heard for nine days. The Magistrate committed the case to the Sessions. On the 3rd of December when the Sessions opened, the Hon'ble Justice Arnould in charging the Grand Jury spoke as follows with regard to this conspiracy case:—)

"There were two cases of conspiracy. One of them was a charge of misdemeanour only, in which Goculdass Lilladhur and eight others were indicted for conspiring to obstruct and defeat the course of justice, by dissuading and preventing certain witnesses from giving evidence in a case pending before this Court. His Lordship said he had not looked over the authorities bearing upon the indictment, but from the analogy of law and decisions in somewhat similar cases, he had no doubt that the charge would well lie against the parties concerned. The facts were these. The Editor of the *Rast Goftar*—Karsandass Mooljee was the name of the gentleman, His Lordship supposed—published an article containing certain charges and imputations against the Maharajas, one of whom has brought an action of libel against the Editor and publisher. The Editor has, in that case, put upon record certain pleas of justification, to the effect that the charges were perfectly true, and in order to substantiate those pleas, it was necessary for him to summon a number of witnesses at the trial of the cause, on the Civil side of this court. It appeared then that, with the view of preventing those witnesses from giving evidence in favor of the Editor, Goculdass Lilladhur and others met in a body to concert measures to secure their object, in other

words, to obstruct and impede the course of public justice. There was no doubt that the alleged object of the meeting amounted, in effect, to the charge preferred against these parties, and they were properly brought up to stand the trial. His Lordship might mention that the case was in no way against the Maharaj; it was one in which the Maharaj himself had set the Supreme Court in motion, for obtaining redress from those who, he considered, had published false imputations against him. However, if any parties, acting on his behalf, attempted to dissuade and prevent others from giving evidence in this court, they would be guilty of obstructing and defeating justice. The question would be, was there evidence to sustain the indictment? The evidence recorded, His Lordship would confess, was conflicting and not, upon the whole, clear in some points. But having read the depositions, he thought the jury would be justified in returning a true bill against the parties charged with the conspiracy. His Lordship was of opinion that, on the face of the depositions, a sufficient case was made out, and the Grand Jury might safely return a true bill, leaving the Petit Jury to deal with the evidence such as it was."

THE TRIAL OF THE BHATTIA CONSPIRACY CASE.

SUPREME COURT.—Crown Side.

FOURTH CRIMINAL SESSIONS OF 1861.

(Before Sir Joseph Arnould Kt.,)

Thursday, 12th December 1861.

His Lordship took his seat on the bench precisely at ten o'clock when the following gentlemen were empannelled on the

Petit Jury.

Mr. John Chatten.—Foreman.

Mr. J. Ross.	Mr. J. A. Menesse.
„ W. Maidment.	„ C. D. Viegas
„ S. Train.	„ Nusserwanjee Byramjee.
„ J. M. Gillighan.	„ Anundrao Babajee
„ C. F. Heycock.	and
„ C. Henderson.	„ Fazulbhoy Noor Mahomed

Messrs. Bayley and Barton applied to the Court to allow their clients to sit outside the dock. The request was complied with.

The names of nine defendants, Goculdass Lilladhur, Luckmidass, Damjee, Adut Kirpall, Canjee Shamjee, Mooljee Moorarjee, Damodhur Hurjee *alias* Damjee Heera, Ragoo Shamjee, Dyal Jairaz and Bhugwanjee Dwarkadass, were then called, and the prisoners answered. The indictment was read over containing five counts. The prisoners pleaded not guilty.

Messrs. Anstey and Dunbar instructed by Messrs. Acland and Prentis for the prosecution.

Mr. Barton, instructed by Mr. Sangster for Adut Kirpall and Dyal Jairaz.

Mr. Bayley, with Messrs. Green and Connon instructed by Mr. Collier and Leathes and Messrs. Bickersteth and Cleveland, for the seven other defendants. The jury were sworn when

Mr. Anstey opened the case by stating that there were several counts in the indictment which charged the defendants with conspiracy and that conspiracy was not less conspiracy for being directed against the public. There was a certain action which was yet to be tried on the plea side of this Court, and that it was for preventing persons from giving evidence for the prosecutor in this action, and preventing them likewise from appearing. Every one of the counts in the present indictment will be supported by evidence. The first witness that will be called in this case is the prosecutor, who is the editor of a Native newspaper, and is likewise the defendant in the libel case, and the printer of that paper is also a party in that action. There were certain articles which appeared in the newspaper in question, advocating the views of the Reform party, that term being applied to Religion and not to Politics. The prosecutor in the performance of his literary labours considered it to be his duty to point to the truism, which is admitted by learned men and scholars of all countries, that all that is good in religion is ancient, and that that which tends to break up those time-honored institutions are of modern innovation, all these impediments are of recent date—such as " Suttee " and " Infanticide." There is nothing sacred in these practices. The prosecutor belongs to the Reform party, because his family have belonged to that party. He believes that if he was to violate his principles, he would lose all social privileges. What he

desired was to restore that which was traditionary in all its pristine purity, and to expose the rest. In respect to the action pending against the prosecutor, he was prepared to abide by the consequences, and pleaded the justification of the publication of the alleged libel, he would retract nothing. In that action it was most material for him to secure the Bhattia witnesses. As soon as it became known that he required their evidence, every means of intimidation had been employed, so much so that it became necessary for him to seek the protection of the law. On the first day that the conspiracy broke forth, there was neither more nor less than a rout or riot, which would be proved by witnesses. There would be witnesses called to speak from the commencement of the conspiracy. There were caste meetings held at which hand bills had been distributed, and an influential member of the caste had been tampered with to prevent him from assisting the prosecutor in his case. It would be proved that the defendants took an active part in those meetings.

(1.) *Karsandass Mooljee, examined by Mr. Anstey*—I am the Editor of a newspaper called the *Rast Goftar* and *Satya Prakash*. The name of the sect to which I belong is *Vallabhacharia*, and the Maharajas are at the head of that sect. There are about sixty or seventy Maharajas in India. I am the defendant of a libel action on the plea side of this Court. The action was brought for an article which appeared in my newspaper. I have put in a plea of justification. In that article I stated the doctrine and discipline of the sect, and the conduct of the Maharajas. I am prepared to call witnesses at the trial on my plea of justification. The evidence of those witnesses will be oral and documentary evidence. One of those documents

used in this trial is used in the plea of justification—a document regarding the interpretation of a Guzerati verse by Goculnathjee Maharaj. I have subpœnaed many witnesses, Bhattias, and have invited many. If the names of some of those witnesses should transpire before the trial, it would do harm. I have no right to attend the caste meetings of the Bhattias. In consequence of information I received from Bhattias, I took out summonses for the prisoners on the 9th of September, and on the 11th of September I made a statement in prisoners' presence before Mr. Crawford. There were many Bhattias present in Court—about 2,000 or 3,000. As I was going away I was assaulted. I left without making any disturbance. [Mr. Bayley objected to witness saying by whom he was assaulted, as this was after the conspiracy had taken place. Mr. Anstey said, there was no evidence yet as to the date of the conspiracy; but if so, then this question was permissible. This indictment was " of conspiracy with others unknown "—and the witness had said he was assaulted by other Bhattias. The indictment did not say that the conspiracy had ended yet, but found that the action was still pending. He had a perfect right to give this new overt act which had occurred before the finding of this indictment, and would cite authority for the right. Mr. Bayley objected on the ground that the defendants were not present. Justice Arnould said that made no difference. Mr. Bayley begged the Court to take a note of that objection. Mr. Anstey said the witness had already sworn that the defendants were present.] I was assaulted by Bhattias. Nothing was said by myself or by the defendants. I returned to the Court, and obtained the protection of the Magistrate. I never assaulted any of the defendants.

Cross-examined by Mr. Barton.—"I am 28 years of age. I belong to the Reform party. I do not consider myself under the influence of the Maharajas. This alleged libel I did not consider filth. It was in no way filth. I did not consider it filth to let it be known throughout the world that the Maharajas had connection with our wives and daughters. (His Lordship threw out as a hint to Mr. Barton that there was a book which we all respected, where very foul things were spoken of in the very plainest language. Mr. Barton said it was not a newspaper. He thought the matter entirely different.)

Witness continued :—"I consider that publication would conduce to public morality. The defendants do not belong to the Reform party. There is a split in the caste—a difference of opinion. It is not a caste row. I am a full member of my caste.

Cross-examined by Mr. Bayley.—"It was in the *Satya Prakash,* this libel was published. My co-defendant in that action was the printer of it. I have been connected with the press for five or six years. I was editor of the *Satya Prakash* in June 1858. I had on several occasions previous to this, published and written against the Maharajas. I have not abused them right and left. I have for some years shown up their practices. I have not become more abusive as time rolled on. I remember that a meeting was held in the year 1858 on account of my attacks. I don't know that persons were then appointed to take proceedings for libel. I don't recollect if there was a report of the proceedings of that meeting published in the *Satya Prakash* on the 28th of June 1858. There are about 10,000 Bhattias in Bombay, and all look upon the Maharajas as their spiritual guides.

I look upon the Maharajas as spiritual guides, not as God. The Bhattias have looked upon them as more than God for 150 years. The Banyas have always done so, so far as I know. I decline to say if I am worth Rs. 1,000, or any less sum. I pay the expenses of this prosecution. I am the sole member of my family who has taken this independent line of conduct. Not more than fifty Banyas have taken the same view as myself. I have subpœnaed about thirty-five witnesses in the libel action. About four or five Bhattias have told me that they were intimidated. Two of those men were called before the Police to give evidence. A third, Khatao Muccoondjee, was called but did not answer to his name. Goculdass Tezpall is not paying the expenses of this prosecution. I don't know that Goculdass Tezpall has set apart a fund for that purpose. I have already received Rs. 600 in two anonymous letters. I don't know who sent it. The defendants were in the Police Court when I was assaulted. No other assault ever took place, though I attended the Police Court on several occasions.

Re-examined.—" The Magistrate took proper precautions to prevent a repetition of the assault. Mr. Crawford addressed the Bhattias on the following day. Mr. Forjett was subsequently present in person, and only a certain number of Bhattias were allowed to enter the Court. I decline to answer whether I am worth Rs. 1,000, or any less sum, because it is an irrelevant matter and nothing to do whatever with the case. There are not more than fifty of those who worship the Maharaj that take the same view as I do. I make a distinction between worshipping the Maharaj as God, and worshipping him as a spiritual guide. I presented the facts of those practices of the

Maharaj in the least filthy manner possible consistent with my duty as a journalist."

Mr. Anstey said that the first plea is of denial that the Maharajas were the preceptors of the Hindu religion; the seventh plea, is a plea of justification; the eighth plea, a plea that the publication as true in fact and effect. Issue had been joined on the seventh and eighth plea.

(2) *Luckmidass Khimjee, examined by, Mr. Dunbar.*—"I am one of the leaders or head men of the Bhattia caste. It is necessary to take my consent before a meeting of the caste is called. No application was made to me to convene the meeting of the 6th of September. I first heard that a meeting was to be convened two or three days before. I had a communication with Luckmidass Damjee about the meeting before it took place. He sent for me. He said to me, 'Come let's go to Mahajun's Oart where the meeting will assemble.' I said 'Why is the meeting to assemble there?' He said 'A commentary that has been published in the *Satya Prakash* about Goculnathjee is incorrect, and on account of that the caste are going to assemble.' I asked him if he had shown that commentary to any Shastri, and he said 'No!' I said let us assemble fifteen or twenty Shastris, and take their opinion upon the commentary published in the *Satya Prakash* on the verse of Goculnathjee.' Goculnathjee was a writer, a Maharaj, who lived some 200 years ago, and his books are looked on as authority in the sect. I said, 'We should take the opinion of the Shastris in writing, take their signatures to the writing, and affix ours.' Luckmidass said, 'No, let us go there, they are all assembled there.' I said, 'How can we affix our signatures till we know the meaning of the writing.' Luckmidass had informed me that the

meeting was to sign a document; it was then that I proposed we should send it to the Shastris. Luckmidass said, 'They will all sign—we shall sign.' I said, I have received a summons from the Supreme Court to give evidence on behalf of the defendants, and if I go to the meeting I will raise this objection I have just mentioned. He then said 'You must not give evidence in the Supreme Court against the Maharaj. You are a man of family, and your children will have to be married.' I repeated that if I went to the meeting I should raise that objection, and he repeated what he had said. I then declined to accompany him. He said to me further that our arrangements would be made in the Mahajun Oart by which any persons who might give evidence against the Maharaj would be punished by the caste. [Mr. Barton objected to witness stating what he interpreted from Luckmidass' remark. Mr. Anstey argued that the question was a fair one. Question allowed.] I understood by that, that if I gave evidence I would be expelled from the caste. The consequences to my children would be that I could not then get them married. On the following day I saw Dyal Jairaz and Goculdass Tezpal. The conversation with Luckmidass Damjee was on the day of the meeting. The conversation with Dyal Jairaz was at Goculdass' office, opposite the Secretariate. I asked Dyal Jairaz what took place at the meeting of the caste in the Oart, and if any arrangement had been made to furnish those persons who might give evidence in the Supreme Court on the side of the *Satya Prakash* and against the Maharaj. I said, before this arrangement was made they ought to have made an arrangement to prevent the Maharaj committing adultery. Dyal said, 'I am aware what the Maharaj does, but if any arrangement to prevent

his doing so were made now, the Maharaj would lose his cause.' Dyal then informed me that two or three private meetings had taken place before the 6th; he said that one meeting had taken place at Byculla, and another at Cumma Ramjee's place, and that a writing had been drawn up to the effect that no one should give evidence in favor of the printer or publisher of the *Satya Prakash*. He said that a third meeting had taken place at Chimun Lalljee's temple. Dyal said he was present at those meetings, and he mentioned the names of other persons who he said were there. He mentioned as being present at the meeting at Byculla the names of Goculdas Lilladhur, Adut Kirpal, Bhugwanjee Dwarkadass, and others. He did not mention the names of the persons present at Chimun Lalljee's but said they were all there. But that I understood there were many persons, 75 or 100. Goculdass Tezpal was present all this time while Dyal was speaking, and Goculdass said that some arrangement ought to be made to prevent the immoral practices of the Maharaj. I said to Dyal, if you had received a summon, you should speak the truth. He said, 'I will tell an untruth for the sake of religion, and the other 10,000 persons who have signed will do the same.' I said, 'If you had received a summon as I have received it in the libel case of Judoonathjee Maharaj *vs.* Karsandass Mooljee?' Muthooradass Lowjee's name was mentioned. Dyal said that Mathooradass was assisting Karsandass Moolji. Dyal said that those who gave evidence against the Maharaj would be turned out of caste. I am on good terms with the defendants—particularly with Luckmidass Damjee.

Cross-examined by Mr. Barton.—"Goculdass was present when the witness had the conversation with Dyal Jairaz. I wrote to Mr. Forjett about the meeting."

(3.) *William Henry Crawford examined.*—"I am a Solicitor of this Court. I saw the prosecutor one day at the police court, and I believe the Magistrate saw him also. When I went to the window, the street was as full as it could be. I saw the prosecutor hustled about in the crowd, and saw him take refuge in a house on the opposite side of the street.

Cross-examined: "I saw some of the defendants in Court. I can't say I saw any of them touch him."

(4.) *Hurjeevun Jivraz, examined.*—"I am a Bhattia, and a *mehta* in the service of Lukmidass Goculdass & Co. I remember a meeting of our caste on the 6th of September last. I attended that meeting. I arrived there at about five o'clock. I saw all the defendants there—they were all there when I arrived. I went away about eight o'clock, or a quarter to eight. Proceedings commenced at about a quarter before six, or six o'clock, Goculdass and others called a Brahmin, Jetta, *thanaye*. Goculdass said, 'Jetta, come here!' Goculdass was sitting in a shed. Jetta stood up. Goculdass said to Jetta. 'Tell these people that no one should make any objection here. No one shall make speeches. Those who want to sign, sign! Those who do not, need not sign!' That was all. Jetta told that to the people. Where the Setts were sitting carpets were spread. The defendants and about twenty-five or fifty others were sitting on the carpets. About 2,000 or 3,000 persons were present. Of those sitting on the carpet, twelve or fifteen besides the defendants were Setts. The floor was an even floor all round, and a way in the middle to go on to the raised floor. About 1,500 or 1,700 persons were sitting on the *oatla*. About 500 or 700 were sitting below. Mooljee and Damjee were

going about arranging for the audience. Mooljee and Damjee are not Setts. A book was read out by Adut Kirpall. Goculdass said to him. "Adut, read out of this book," and Adut read. I heard some part of what was read, and some I did not hear. [Mr. Bayley objected to the admission of this hearsay evidence. The Court said it was admissible. It did not matter whether the matter was written or spoken.] I heard that those who were of opinion that the commentary on Goculnathjee's verse was correct should not sign; and that those who were of opinion that it was not correct should sign; and that those who did not sign should be punished by the caste. Canjee Shamjee also was reading from a paper, and I heard him say, 'If any one gives evidence in favour of the printer, he will be punished by the caste.' Canjee said, 'If any one does not sign this he will be excommunicated.' Cries outside 'Sign; sign! affix your signatures,' I heard. After the reading was finished the book was handed to sign. People were told to sign then. It was said that no one should leave the meeting without signing. Every one who loved his religion would sign, was also said Mooljee and Damjee said, "Brothers, affix your signatures." Then people began to put their signatures. I saw nobody leave after signing, I left without signing. I don't know who signed the book first. I saw Goculdass sign, Luckmidass, Adut, Ragoo and others took the signatures. All the defendants assisted in it, some were standing with ink, and some with pen. People were coming into and going out of the oart. When I went near the gate I found a bench placed across in front, and Ragoo was sitting on it—Damjee and Mooljee were also there. Ragoo and Damjee said, 'Do not go away, brothers, without putting your signature.' I attempted to go out, and Ragoo asked me if I had put my signature: I said,

no. Then he asked me if I would sign to-morrow, and I said yes. I have never signed it. I told him I would sign it, because I wanted to go out! After I got out of the gate I lingered for a short time outside, when I heard a person say, 'Shut the gates. Do no let any one go out!' and I saw the gates shut. Ragoo was distributing handbills. I was going to take one from Ragoo, when a man present gave me one. I read a portion of that, and then put it by. Afterwards I gave the handbill to Luckmidass. [Mr. Barton said the handbill could not be put in as evidence against the defendants unless the handbill was signed by, or contained the names of some one of them. Mr. Barton cited authority for that argument. Mr. Dunbar said that when the case was before the Magistrate he (Mr. Dunbar) had offered one in evidence, and the Magistrate had refused to admit it notwithstanding he (Mr. Dunbar) quoted the Queen *vs.* O'Connell. The Magistrate held its identity must be proved before it could be read. His Lordship said he could not admit the justness of such a ruling. It would be well to have the handbill put in. Mr. Anstey said there were two notices. He read them to the Court and they were put in as evidence.]

(*Translation of two Guzeratti Printed Hand-Bills distributed in the meeting of the 6th September.*)

PUBLIC NOTICE.

All the Bhatia Setts and all the Chief men among the Vaishnavs are informed as follows: At present Shri Jadunathjee Maharaj has brought an action of libel against Karsandass Moolji. This man has written in his *Satya Prakash* as follows:—"Before one has himself enjoyed her, he should make over even his wedded wife to the Gusaijee Maharaj, and he should also make over to him his

sons and daughters. One is to use (one's wife) after having offered her to the Gusaijee Maharaj subsequently to marriage and even before enjoying her himself. In this manner Shri Goculnathjee has made a comment on the work treating of the connection with Brahma.* And accordingly the Maharajas enjoy the tender maidens, wives and daughters of their followers." In this manner it is written and published in the *Satya Prakash.* And in his plea to the action this man has also stated as follows: "In the year 1855 the Bhatia community assembled together to make an arrangement about this matter: so that at the time of the trial, the evidence of those Chief men will be adduced." This is what we have heard.† Therefore we make known to all our brethren that the community did not assemble on any day whatever to make any such arrangement as that mentioned above. Nor were any person's signatures affixed to any writing or paper to the effect of what is mentioned above. For different purposes other than what is mentioned above, the Chief men's signatures have been made on several occasions. The documents bearing these signatures are deposited with the leading *setias* of the community on behalf of the community. Therefore those who have made their signatures inform the *setias* here that some of the reformers with a view to support the abovementioned statement are endeavouring to obtain from the leading *setias* the deposited documents bearing those signatures in order to produce them in Court in evidence in this cause. This is what we have heard. Therefore if this thing should come to pass, and if the persons with whom those documents are deposited should give them

* (i. e. the Supreme Being.)

† (Meaning this is what we have heard that he has alleged.)

up, then the risk appertaining to that, shall be on the heads of those who shall give them up. This is the sole representation. The 4th September 1861.

Written by several Bhatias who have affixed their signatures to the former Document (or Documents.)

(A true Translation)

(Signed) J. FLYNN,

Chief Translator.

ADVERTISEMENT.

Be it known to all the Vaishnavs* Mahajans† of Cutch and Abhrasa and Halar inclusive of all the Bhatias, that the community of reformers that are opposed to (our) religion have made and are still making several sorts of incorrect, false, and immoral attacks in the newspapers against the persons of the Shri Gosayis‡ in Bombay. Therefore Goswami Shri Jadunathjee Brijruttonji Maharaj‡ has brought an action of libel in the Court against an editor of a newspaper and Shri Runchorji Maharaj also has sent a notice for bringing an action of libel, in consequence whereof the reformers have been thrown into great anxiety here, it being impossible to prove this case therefore the reformers with the view of compromising the case of shri Runchorji Maharaj have, it is remoured here, sent a Bhatya from this place to Mandvi that he might by making some kind of request to the Vahooji § Maharaj of Shri Chotaji Maharaj and by making false representations (to her) obtain in writing a document from the Vahooji Maharaj and produce that document as evidence in the Court and that he might by making a request

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* (Worshippers of Vishnu.) † (Great Man.)

‡ (High Priest.) § (Wife of Maharaj.)

to Runchorji Maharaj and by making false representations to him obtain some way or other a document (from him) to compromise the case. Such is the intention of the reformers. We have heard that they have for this purpose sent a man from this place; therefore the Vaishnavs community of this place recommend all to and this representation paper made to the effect, that if this account be true, no documents of any kind whatsoever should be passed to the man belonging to the reformers, any one who may hear this information should request Shri Runchorji Maharaj and the Vahooji Maharaj of Shri Chotaji not to pass any document through mistake or forgetfulness. It is essentially necessary for the Bhatya Mahajans of Cutch, Halar and Abhrasa to make arrangements (or adopt measures) in respect of this mrtter. This is the prayer.

Written by the Vaishnavs of Bombay whose compliments be pleased to read.

(Signed) NARAYAN DINANATH,
Translator.

Witness cross-examined by Mr. Barton—"I have read through the handbill. I believe the handbill correctly contained the object of the meeting.

By Mr. Bayley:—"I would not know the book again if I was to see it. It was bound up like this one now shown me (a foolscap-sized day book is produced in Court.) I heard Adut Kirpal read from the book."

(5.) *Khuttaoo Ludha*, examined by Mr. Dunbar:—I am a Bhattia. I deal in cotton. I attended the meeting. In the morning of the day when the meeting was held the *thannaye* went round and

warned the people. I had heard at Jewunjee's temple that the meeting was to be held. It was a matter of notoriety among the caste members that the meeting of the 6th of September was to have been held, and the object of the meeting was also a matter of notoriety. Some members of the caste knew that some secret meetings had been previously held. The object of the meeting was a matter of notoriety throughout the caste. The object, which was a matter of notoriety, was to make an arrangement respecting the libel case, and to prevent persons from giving evidence against the Maharaj. I met two of the defendants —Dyal Jairaz and Bhugwanjee Dwarkadass—before the meeting in the oart took place. It was about one or two o'clock in the afternoon. I met them at Jewraz Balloo's place of business—in Bazar Gate Street, within the Fort. Eight or ten persons were sitting there—Goculdass Tezpal, Khuttaoo Muccoondjee, my two brothers, and others. Dyal Jairaz spoke to others about the meeting. Khuttaoo Muccoondjee asked Dyal Jairaz why the peoole were going to assemble to-day. Dyal and Bhugwanjee both spoke, and said it was to make up an arrangement. Khuttaoo Muccoondjee asked Dyal Jairaz if any arrangement was to be made about the Maharaj committing adultery, and Dyal said it was true the Maharaj committed adultery, but if we made any noise about it now, the Maharaj would lose his cause in Court: he said we would speak to the Maharaj about that afterwards. Dyal said, 'if we are called to give evidence, and all put upon our oaths, we will state that the Maharaj does not commit adultery.' I went to the meeting at five o'clock in the evening. (His Lordship said as the case would likely last sometime it was not advisable to sit longer. The Jury were allowed to retire to their homes for the night.)

Friday, 13th December.

Witness continued—"When I went there, there were 200 or 300 persons present. Several persons came afterwards. The defendants were all there when I arrived. Damjee Heera and Mooljee Morarjee made people sit. Before the proceedings commenced, Goculdass Lilladhur, Dyal Jairaz, and Bhugwanjee Dwarkadass went aside and consulted together. Proceedings commenced at about half-past six o'clock. After they went aside and consulted together I saw a book with Ragoo Shamjee. It was about half an hour after. He took the book from a cloth in which it was wrapped up. Goculdass said, 'Read this to the meeting.' Adut read it. I was as far as from the witness-box to Mr. Barton (about five paces). I could hear what was read. I know the purport of it. [Mr. Bayley objected to witness stating the purport of what was in the book. The book itself could be produced. Mr. Anstey said he must reply to the objection with the same statement he had made use of yesterday. They had no means of knowing whether the book produced in Court was the book or not. Mr. Anstey believed it to be a forgery. The book was not produced in the Police Court. Mr. Bayley said he only took the objection, and wished to continue the objection. His learned friend had no right to let the jury know in an indirect manner that the book was not produced at the Police Court. Mr. Anstey said, Mr. Bayley had himself yesterday mooted that question, and had given unsworn evidence on behalf of his clients. Objection recorded and overruled.] So far as I remember, it said the commentary on the verse of Goculnathjee by the printer or publisher was incorrect; and those who may not consider it incorrect will not sign this book, while those who

may consider it incorrect will sign this book: and those who consider their religion is the true religion should sign this book. And those who may consider that the present Maharajas do not commit adultery should sign the book. And, as for the printers and publishers, and their abettors and aiders, they will be called to account according to law. They did not say what law, but I understood it to mean the law of the caste. The members of the caste were to call them to account, as I understood. That is all I remember, as it was a long time ago. After that had been read Canjee Shamjee made a speech. Canjee was standing behind Adut Kirpal when he spoke, and about five paces distant from me. When Canjee was speaking he had a paper in his hand. Canjee said, 'Our religion is the true one, and our religion inculcates bathing, the worship of the gods, and pilgrimages to holy places. These are unholy comments upon our religion; and whoever may assist those printers will be punished by the caste.' Then Canjee sat down. After that Adut Kirpal called the crier, Jetta, and said to him, 'Do you ask the members of the caste whether they approve this speech, or not! And whether they would sign the book after the *Setts* had signed it?' The majority said 'yes, we will sign.' Then the crier put another question to the meeting. He said 'it will be necessary to write letters abroad, and will you assemble again if desired by the Setts?" That was by the direction of Adut Kirpal. Then the meeting approved, and said they would attend. Luckmidass Damjee or Goculdass Lilladhur signed first, then all the defendants signed; other leading Setts then signed. Then Ragóo Shamjee took the book and went to the gateway—Damjee Heera and Mooljee Morarjee went with him. I think the gate was open then—it was shut afterwards. The gate was not en-

tirely shut—a wicket was left open. They were taking signatures. Ragoo Shamjee was sitting on a bench placed opposite the gateway. The bench was not before the gate when I went in. I did not see who placed it there. It was quite close to the gate. Those who signed the book, went out. Only one person at a time could go through the wicket. Ragoo and the two defendants who were sitting close to him said, those who consider their religion the true religion should not leave without signing. For three or four days, till the 10th of the month, signatures were taken on the verandah at Goculdass Lilladhur's. Members of my caste signed the book there; some men, and some boys. A boy who lives in the house where I live, ten years of age, said he signed it. After the *thannaye* put the question at the meeting, no one raised any objection. All remained silent. I was present at Walkeshwur at a conversation between Goculdass Tezpal and Dyal Jairaz. I was not near enough to hear well. Ruttonsee Callianjee was there. Corjee Ludha, Callianjee Ludha and Khuttaoo Muccoondjee were also present. Ruttonsee Callianjee and I were sitting apart. We were conversing together and looking at some object.

Cross-examined by Mr. Barton.—"That object was a Bhattia going into the house of a courtezan near by. I am a Cutchee, and not a Halaee. I did say before the police that the Halaies had excommunicated me. There was no leather on the bench near the door. It was made of wood, and those who sat upon it must know whether it was soft or hard.

By Mr. Bayley.—"I did not sign the book. I saw the book well when it was open. Lights were lighted at the time the book was read. The book was a book bound like this now shown me.

(same as described by a former witness). I heard all that was read. (Mr. Bayley examined the witness upon a paper held by himself).

Re-examined.—"I worship the Maharaj as a spiritual guide. [Mr. Anstey asked that the document which Mr. Bayley had examined upon should be put in for the purpose of re-examination upon. Mr. Anstey cited a case to the point. Mr. Bayley objected to it. He submitted that Mr. Anstey had no right to it. The case cited by Mr. Anstey was not to the point. Mr. Anstey said that if the learned gentleman chose to cross-examine from his brief, he (Mr. Anstey) was entitled to see the brief. Mr. Anstey cited Taylor in support of his argument. His Lordship was under the impression that the prosecution were entitled to see the document. He would look into the authorities, and in the meantime examination should be resumed.] Adut, when he read the paper, said that religion, religious preceptors, and reputation; were to be protected; but I don't remember if he said how. As Adut read I understood him to say that the printers accused the Maharajas of adultery with our wives and daughters, and that their was nothing of that kind in our religion. The meaning of the printers was said to be this: that the wives of the members of the caste, should be offered up to the Maharaj before being enjoyed by us. Our caste proceed against persons offending by the law of the caste: the chief law is expulsion from the caste. I can't say that book shown me by Mr. Bayley was the book I saw at the oart.

By the Court.—"The Sett is an hereditary title. Among the Bhattias Jewraz Balloo is considered the principal Sett, as his forefathers were chief Setts."

(6) *Charles Forjett*, examined.—"In my official capacity (Deputy Commissioner of Police) I received a letter. I produce it. I acted upon it. In consequence of something in the letter I issued an order to a constable to be in attendance with a small party of policemen to see that no disturbance took place. I think the prosecutor was present when the letter was delivered. The letter was signed by Luckmidass Khimjee, Muthooradass Lowjee and two others. I was not applied to, to the best of my recollection, to take the chair at that meeting. I passed by the place in the evening, ascertained that everything was quiet and went away."

Cross-examined by Mr. Barton—"I did not hear that any threat or intimidation was offered there."

By Mr. Bayley.—"I saw Goculdass Lilladhur with reference to the meeting, and told him that he had better be careful and not let his party create any disturbance. Goculdass said that there was no intention on the part of his men to create a breach of the peace. He said the object of the meeting was to ascertain who were the Maharaja's friends, and who were not. It was at five, half-past five, or a quarter to six, when I rode past. I don't think I have any Bhattia sepoys. The gate was open when I went by."

(7.) *George Gahagan*, examined—"I am a constable of Police, and do duty at the Picquet. In consequence of instructions from Mr. Forjett I went to the meeting on the 6th of September, at about half-past six o'clock. I took two sepoyes inside with me, and left a sepoy and a trooper outside. The two sepoys I took inside, were put outside by the request of Damjee Heera. He said there was

no fear of a row. I recognize eight of the defendants as being present. Six of the defendants were sitting on a bench. Damjee Heera and Ragoo Shamjee were walking about. Goculdass Lilladhur appeared to be at the head of the meeting. Proceedings commenced immediately after I went in. Jetta called the meeting to order—told them to keep silence. After that a book was read by Adut Kirpall; the book was handed from a bench where they were all seated. I don't know which of the defendants handed the book. After the defendants signed the book, people standing about came and signed. Then it appeared to me an objection was taken to signatures being taken there at the bench, and the book was taken outside the gate. I went out about eight o'clock. The gate was then shut —the wicket was open. Signatures were then being taken by Ragoo Shamjee and Damjee Heera outside the gate. The people who had the book were standing at the corner of the gateway. People, I think, might have passed out behind them without being seen. I had a conversation with Ragoo Shamjee and Damjee Heera. Ragoo said the meeting was to ascertain who was for and who was against the Maharaj. Ragoo said those who liked might sign, and those who did not like, need not sign. This conversation was before the meeting commenced. I was intimate with Ragoo before that. Damjee said the same as Ragoo, and added that there was an action of libel in Court on account of some of the caste. Also he said that there were missionaries mixed up in their caste the same as there were in ours. Then Ragoo asked me to show him the paper I had got from Mr. Forjett, as he wanted to see the signatures attached to it. I had the letter with me, but did not show it to him. Handbills were distributed in the street by Ragoo Shamjee. The wicket is

about two feet and a half wide. I am not sufficiently acquainted with the language to tell what was read or spoken. They spoke Cutchee, while they read from the paper in Guzerati. I am of opinion that the object of the meeting was disclosed both in the paper and book, more in the paper than in the book as, after the former was read, they all shouted. There was no shouting after the reading from the book. I do not think all the persons present could hear what was read, only those immediately round the spot, from the low tone of voice in which it was read. I heard the words "contrary to caste" and that "the Maharaja has been served with a summon" read from the paper, which made me think that the, most important of the two. The paper was a slip about six inches wide about eighteen inches long, and light yellow paper. The book was half-bound.

Cross-examined—"I should think there were 2000 people present. I ventured there without any fear. So far as I could see there was no intimidation. I judged the people were anxious to sign it, from their action. I saw no force used, or pressure of any kind."

(8) *Goculdass Tezpal*, examined by Mr. Anstey—"I am a merchant, a justice of the peace, and a chief Sett of the Bhattia caste, and reside near the Bazar Gate in the Fort. I am one of the founders of a school at which Bhattia children are educated. On the 5th of September, I heard from Dyal Jairaz that a meeting was to take place. I was at a fair at Walkeshwur when I heard that. I asked Dyal what all the noise was about, and he said, 'Let's go aside and speak together.' Then we went to the *dhurrumsalla*, where Khuttao Muccundjee and others were. Dyal then said, 'Bhugwanjee has received a note from Goculdass

Lilladhur.' Dyal said that the letter called for a meeting at once. I asked what was the subject, and Dyal said, it refers to the commentary of Goculnathjee and to the action between Judoonathjee Maharaj *vs.* Karsandass Mooljee. I asked Dyal if he had referred to any Shastree, and he said he had not. He said fifteen or twenty persons had assembled at Cumma Ramjee's and mentioned the names of three or four of them. He said that Canjee Shamjee read a paper and after that said some arrangement should be made to prevent our religion from being upset. He said that a meeting took place that day at Chimun Laljee's temple, and that he with others went there. Bhugwanjee sent for Goculdass Lilladhur, inviting him to come there with his other friends. Dyal mentioned the names of Goculdass, Luckmidass, Adut, Ragoo, Cajee, Bhugwanjee, and others as being present. Dyal said a discussion took place there regarding the commentary on Goculnathjee's verse, and that it was resolved a full meeting should be held.

"The following morning about 7 o'clock I was sitting at the shop of Jewraz Balloo with Khuttao Muccoondjee, when Jetta, the crier, came there, and said Luckmidass, Pitamber and two others had desired him to ask my permission for a caste meeting. He came two or three times that morning. I did not give my consent. I am in a position that my consent should be obtained. Bhugwanjee and Dyal came to my house at half past twelve o'clock, and we three went to the house of Jewraj Balloo. Khuttao Muccoondjee came there. We went upstairs; I asked Bhugwanjee what the object of the meeting was, and he said it was about the commentary of Goculnathjee, and a paper was to be drawn out, and the commentary refuted (or

falsified). The writing was to be prepared in the Mahjun oart. Dyal asked me what my opinion was. He said, 'you have received a summons on the part of Karsandass Mooljee. What evidence will you give? I said I would say nothing that was false. Dyal then said, 'It is true that the Maharaj commits adultery, but as this question is connected with religion it would be as well to say nothing obout it.' Bhugwanjee also said that. Dyal said, 'Those who assist Karsandass will be punished by the caste.' I did not attend the meeting. On the following day I sow Dyal again in my office. He came of his own accord. I asked him what resolutions were passed at the meeting of the 6th. He said a writing had been prepared, and it was written there that if any one should give evidence for the publisher he should be punished by the caste. I said 'Did you assemble in Goculdass Lilladhur's oart, at Matoonga?' He said, 'No in Goculdass Lilladhur's oart at Byculla.' Dyal said there were fifteen or twenty persons at that meeting. He mentioned the names of some of the defendants as being present. He said that Purbhoodass brought the plea put in by Karsandass in the libel action and explained it; and said that our religion was about to be destroyed, and that no one must go and give evidence on behalf of Karsandass. Dyal did not say on what day that meeting took place. It was on the 7th that I heard of it. I saw Luckmidass Khimjee at my office on the 7th. He came there while Dyal and I were speaking together. At the meeting at Walkeshwur Khuttao Ludha was present.

Cross-examined by Mr. Barton—"I was fined seven or eight years ago by the Magistrate for making a false return of carriages. The prosecutor of this case was a school-master employed by me.

When at Walkeshwur, and we were conversing, Khuttao went to look at a holy woman! That "holy woman" lived in a house opposite. I never went to look at that "holy woman" myself. I don't know the character of that woman. Khuttao went to see who that Bhattia was that went into the house where the woman was. I have known the Maharajas committed adultery for seventeen or eighteen years past; and yet I worship them. No man can be expelled from caste unless a majority of the caste decides he shall be. The nine defendants have not the power of expelling me from the caste. There are only two Setts among the defendants.

Re-examined—"My *mehta* appeared for me when I was fined."

(9) *Hemraj Khetsey*, examined—"I am a broker, and live in the Fort. I attended a meeting of the caste on the of 6th September. I arrived there about seven o'clock. The nine defendants were there. Adut Kirpall read from a book. I did not hear well. I do not remember what it was Canjee Shamjee read from a paper, and after he had finished reading, he said, "Brethren will question persons who give evidence for the publisher." After that the crier was called. I have not been subpœnaed as a witness in the Supreme Court. I have not been threatened in case I give evidence in the Supreme Court. All that was stated was, that he who assists the printer or publisher will be questioned by the brethren.

Cross-examined by Mr. Bayley—"I did not sign the book. I was not asked to sign it. I was at the meeting the whole time. I remember a part of what was read.—A part of what was read from

the book—I don't know of any other object of the meeting than to express an opinion upon the commentary. I heard no threat.

Re-examined—"I was about thirty paces distant from the spot when the paper was read."

(10.) *Nanjee Morarjee* examined by Mr. Anstey—"I am a Muccadum residing in Hunnooman Lane. I was present at the meeting of the 6th of September. I was aware that meeting was to be held one or two days before. I was aware that handbills had been issued on the 4th of September. I saw one of them; I should recognize them. One of those handbills (one produced) is not the one distributed on the 6th of September. (Witness here recognized a second handbill shown him as one of those distributed on the 6th September. It was read to him by the Interpreter, and witness said it was the same) Ragoo distributed ten or twenty, and said the rest were to go to Cutch." (The official translation of this handbill was read, to the effect that all people in Cutch should take care and communicate no intelligence to the reformers' emissaries who had been sent to Cutch to obtain information.)

(11.) *Purshotum Hemraj* called by the prosecuting counsel, and examined by Mr. Bayley.—"I am a poor man and I cannot give any evidence. I was greatly alarmed, and could not give evidence. I don't want to name anybody. I am very much afraid. I don't want to name anybody.

By the Court—"I am a Bhattia. The whole world abuse me.

By Mr. Anstey—"I do know some, but I am afraid to tell what I know."

(12.) *Bhanjee Dhurrumsey*, called by prosecuting counsel for cross-examination. This witness was not cross-examined.

[On account of the very great confusion in Court, which the Court crier found it impossible to repress, his Lordship was compelled to call upon the Deputy Sheriff, costables, and others, to shew increased activity. Quiet was very soon restored. The Court was densely crowded, and made the duty of keeping order consequently not a light one.)

Mr. Anstey, when quiet had been restored, read the defendant's answer in the libel action, which revealed the most abominable doctrines ever heard of as guiding the Bhattia caste, or that sect of it to which the conspirators belonged. Mr. Anstey read for more than half an hour, when he was stopped by the Court. Sufficient was read to inform the jury of the materiality of the pleas.

(13.) *John Doming Rozario*, a clerk in the Prothonotory's Office was called, and swore to the answer.

(14.) *Pestonjee Bazonjee*, examined—"I am a clerk in the office of Messrs. Acland and Prentis. I delivered the pleas put in by defendants in the libel action on the 15th of August."

(15.) *Hurichand Bhanajee*, examined—"I am a clerk of Messrs. Acland and Prentis. I served a summons upon Jivanjee Maharaj before the 6th of September."

(16.) *Kessow Bhowo*, a clerk in the Supreme Court, examined—"The cause of Judoonathjee Maharaj *vs.* Karsandass Mooljee is set down for trial."

Mr. Anstey said that was the case for the prosecution.

Mr. Barton asked if his Lordship was of opinion there was any case to go to the jury? His Lordship said there was.

Saturday, 14th December.

(The Court-room was more carefully guarded than on previous days, and but few natives were admitted. The considerable number of European gentlemen in Court manifested the great interest which has been felt in this case.)

Mr. R. B. Barton, on behalf of two of the defendants, addressed the jury in a most able and eloquent speech. They had heard this great Bhattia case to the end, so far, as the prosecution was concerned, and it now became his duty as counsel for some of the prisoners to address them upon this most unheard of and perplexing prosecution—perplexing as to what defence could be made to charges in support of which little if any evidence had been adduced and that little so forced and perverted as to create a difficulty even by its own obscurity. The jury must be aware of the extraordinary interest the case had excited, and still continued to excite amongst the native community of this vast and densely populated town; and that for reasons that must be obvious to every one—first, on account of the novelty of the accusation, this being the first case of the kind ever presented before a Bombay jury; secondly, from the known and well established respectability of the accused; and, thirdly, from the nature of the charges trumped against his clients, and laid out in that cloudy and overgrown indictment they had all seen in the hands of the Clerk of the Crown, when the defendants were arraigned. Mr. Barton did not consider that there would be any

difficulty in upsetting all those charges, or that there was any thing in them worthy of remark, conspicuous and remarkable as they were in nothing but their vagueness, and peculiarly in their want of precision, unworthy of comment, were it not for the dangerous precedent sought to be established by the prosecution should a conviction be obtained. The opening address of the learned counsel for the prosecution in itself betrayed a knowledge of the weakness of the case; for instad of giving some insight into the case he intended to present, he (Mr. Anstey) rolled about like a dismasted ship in a heavy sea reaching at one point ancient Rome, then modern Italy, back to England in the time of our Harry the Eighth as he called him, fit man to name in a case connected with so much blasphemy and filth; and then with a peculiar and eccentric roll we were taken, said Mr. Barton, to Strange's Hindu Law; and the horrors of excommunication, seasoning his weak and tottering statements with grains of Attic salt and classic pepper, utterly forgetful of the charge of conspiracy, most carefully kept in the background; and when they were at the end of that opening address as far as proof was concerned there they were now. The men for whom he (Mr. Barton) appeared were charged with an infamous and wicked crime, if it were legally crime at all, and he trusted the jury would, as men who had a solemn duty to discharge, look carefully into the case with all its bearings, motives, and peculiarities, ere they ventured to return a verdict of guilty against all or any of the prisoners, now for the first time in their lives arraigned at the bar of a criminal Court. The case he would endeavour to make on behalf of his clients would be a simple one because it would be a true one. The learned counsel said this

prosecution was not got up for the purpose of advancing public morality, but for the purpose of creating an unfair and dishonest prejudice against the plaintiffs in the action now pending on the plea side of the Court, and to create a money interest on behalf of the defendant in that action and the prosecutor in this most miserable and oppressive "prosecution." Before entering on the demerits of this extraordinary case, Mr. Barton said he could not help animadverting upon the course pursued by the prosecution from first to last, and he considered that means had been used and intimidation shadowed forth by application to the Court to set aside a few seats for members of the caste to which prisoner belonged, and application for a force of European police to keep order. The effect of this application, although apparently made in good faith, had had its effect, and the Court had never been half filled upon any day of this trial. He (Mr. Barton) protested against this Court being any but an open one to all Her Majesty's Indian subjects without distinction of creed or caste.

His Lordship here interrupted the speaking, observing that the request preferred to the Deputy Commissioner of Police was simply to have a body of men to prevent the overcrowding of the Court. The request did not go beyond that.

Mr. Barton continued—He said as long as he had life and power he would protest against a hole and corner conviction being obtained, and undue means of any kind being used to turn the machinery of this honorable Court into an instrument of torture. After some further comments on the conduct of the prosecution, and the nature of the evidence, Mr. Barton entered very fully into his own case, which was a statement of the meetings held since June

1858 to take into consideration the disgraceful publication in a Guzerati newspaper, the *Satya Prakash*, against the Bhattia religion and community, and to adopt measures to prosecute the publishers and to have them punished by the laws of the land. Mr. Barton told the jury they were brought to give a verdict on the libel action pending on the plea side of this Court. The defendants had only done what they had a perfect right to do. Mr. Barton concluded his address with a very able appeal on behalf of his clients.

Mr. Bayley, on behalf of six of the defendants, followed in a very able speech, holding the attention of the jury for nearly three hours. He stated what it was that constituted a conspiracy, and how the present trial was constituted. He argued that this trial could not be supported, and cited several passages from Smith's speech in the trial of O'Connell and seven others, in Dublin, in 1843, in support of the argument, passages which were laid down as good law. Such an indictment as this, Mr. Bayley said, was never before framed—it was an old law indictment, (*Russel on Crime*). There was not a modern case like it. The defendants were indicted on a common law offence, and the learned counsel (Mr. Anstey) had asked the jury to look at the case through English spectacles. He (Mr. Bayley) said the case was without a parallel, and could not be so viewed. The people were a peculiar people, and the English would always be profoundly ignorant of their habits and modes of thought. The defendants, the learned gentleman would have the jury to bear in mind, were not the scum of the streets. The jury were trying the highest men in the Bhattia community—two of them the highest Setts of the caste; and his learned friend's

(Mr. Anstey's) language, calling them "most ignorant and degraded," ought not to have been used. These men were living almost the same as they did centuries ago, so far as we knew; and the English would never know more of them. This matter was wholly a caste matter, said the learned gentleman: the East India Company had always made it a point not to interfere with the natives in their religion and matters connected with it; and the same freedom was held out to the natives by our present good and wise government. The learned counsel here entered into the history of the Indian Press from the time of the publication of the first newspaper in Bengal in 1780, when it was so closely guarded as to be but a mere receptacle of advertisements, fetes, balls, etc., down to a recent date when it first enjoyed and continued to enjoy the greatest freedom. But that freedom was not to use the press as a vehicle of private malice and unlimited abuse of the religion of a large and respectable community.

The learned gentlemen called no witnesses on behalf of the defendants.

His Lordship, in summing up the case, made a few general observations upon the charge preferred against the defendants. The essence of conspiracy was a combination for an unlawful purpose, and it was immaterial whether or not the measures taken by the persons entering into such combination ensured, or were the best adapted to ensure, the object aimed at. The evident object in the present indictment was stated to be to obstruct the course of public justice, by preventing witnesses in a case pending in this Court from coming forward to give their evidence. The defendants were thus charged with unlawfully *combining* to defeat the administration of justice in this Court—in fact, to turn it

into an instrument of injustice. It had been remarked by one of the brightest of English intellects that *secresy* was a necessary ingredient in a charge of conspiracy, and that where the proceedings were conducted openly they would not come under this office. Though this might be correct according to poetic justice, His Lordship, as an administrator of criminal law in this Court, felt bound to say that such a doctrine was not correct in criminal justice. The essence of conspiracy was combination, no matter if the object was pursued openly or secretly. Secrecy is not an essence of the charge. Much stress, His Lordship went on to say, had been laid upon the argument of counsel that the principles of English criminal justice, could not rigidly be applied to the present case. In this opinion His Lordship could not agree: this was not a case in which the Maharaj of the Bhattias sought redress for any imputations cast upon his private character or upon his high office of spiritual guide and preceptor. This was an attempt in a combination, to turn into an instrument of in-justice the very tribunal for the adjudication of justice, to which the Maharaj himself had applied for redress, for imputations cast upon his honor and authority. And if the evidence satisfied the jury that these persons entered into the combination, as the agents of the Maharaj, they were amenable to the charge of conspiring to defeat public justice; therefore the principles of English criminal law were as applicable to this as to any other case. There was this remark to be made, which did not apply to other criminal cases, viz., that the law held as liable to punishment all parties privy to the combination and its objects, though they might be present or absent at any particular meetings of the conspirators. In a case of this kind secondary evidence was admissible as to the object of the

conspirators: the general effect produced upon the mind of a hearer by any speeches made or by extracts read from a book at the meeting, would be evidence as to the objects of the combination. With these and other general observations upon the nature of the charge, His Lordship proceeded to read the evidence *in extenso,* during which he observed that the language of the plea was perfectly unobjectionable when taking into consideration the occasion calling it forth. It was a false delicacy introduced only into modern society which named such articles in a bad light. The truth is, said his Lordship, nothing less than hard terms will answer in describing hard practices; and in answer to a serious charg in a court of justice it is better to speak plain.

The jury retired for deliberation at a quarter to 4 o'clock, and returned into Court at precisely half-past 4 o'clock with a verdict of GUILTY.

Mr. Anstey, as soon as the verdict was pronounced, appealed to the Court not to be too severe in the sentence. Justice has been vindicated, Mr. Anstey said, and the puny efforts of the defendants had failed. He (Mr. Anstey) would appeal to his Lordship, if he could consistently, not to go beyond the infliction of a fine on the defendants.

Mr. Bayley asked the Court to suspend judgment. He would move the full Court on some legal points.

The Sessions was accordingly adjourned till Tuesday next. Defendants were admitted to bail in their own recognizances.

His Lordship, in dismissing the jury, said that it might be satisfactory to them, as there was

great interest excited in this case, to have his opinion. He could say that he entirely concurred in the verdict at which they had arrived.

Tuesday, 17th December 1861.

BEFORE A FULL COURT.

(THEIR LORDSHIPS having taken their seats on the bench shortly after eleven o'clock, the nine Bhattias, convicted on Saturday last of conspiracy to obstruct the course of public justice, were arraigned. The Court room was early crowded with people of all classes, so great was the interest to know the result of this peculiar case.)

Mr. Bayley moved the Court that judgment should be arrested, or that a new trial should be had. Addressing himself first to the cause of arrest of judgment he said no criminal offence was set forth in any count of the indictment. If set forth at all, it was in the first for counts. The charges contained in those several counts were charges which were perfectly unknown to the law of England and of India, and in point of fact no legal offence was stated: it could not be said that such an offence was ever before stated in any indictment in this Court, or in any Court in Great Britain. The indictment was for conspiracy, and in the first four counts several overt acts were set out, and in the description of the offence the word used, "intimidated," had no legal signification. The first count, after certain introductory remarks, states that "the defendants on the 6th September did among themselves conspire to intimidate persons from giving evidence." Then the indictment set out six overt acts, one of which was that the defendants would punish all persons who should come forward to give evidence; another,

that they called a meeting on the 4th of September for conspiring to prevent persons from giving evidence; another, that may next called a meeting on the 5th of September for intimidating persons; another, that they called a meeting on the 6th of September for providing for the expulsion of all persons from caste who should appear and give evidence against the Maharaj; and another overt act was, that the defendants compelled all persons to sign a book. It was a count framed on some supposed common law offence. In the first four counts the word "intimidate" was used. Now, there was no authority for such an indictment. The learned counsel referred their Lordships to a case 2 Strange's Reports, p. 904, and others, all of which sustained the argument. The learned counsel cited a case decided in the 4th year of the reign of George the 2nd, where the indictment was for persuading a witness not to give evidence in a case of forgery, and said it was no doubt highly criminal to persuade persons from giving evidence where the Queen was prosecuting; but the case before this Court was for intimidation in a civil suit, and no case whatever could be found where an indictment had been drawn under such circumstances. The cases were entirely different; one was a case where the King or Queen was prosecutor, and in the other it was a case of civil right. In this case there was no ground of criminal proceeding. Mr. Bayley cited (13 East) the case of *The King* vs. *Turner* and others; and *The Queen* vs. *Rowlands* and others, which was a recent case in the Queen's Bench, in which it was held that the defendants conspired unlawfully to intimidate, and the Court held that the indictment was bad. The workmen conspired unlawfully to intimidate their master, and that was a more active case than the present one. He (Mr. Bayley) submitted that

it lay upon his learned friends for the prosecution to show that the indictment would lie. In Russel on Crime, page 557, it is stated in the third paragraph on conspiracy, to be a misdemeanour to persuade a witness not to give evidence, and the note appended to that referred to 2 Strange, which he had already cited. The learned gentleman said it was only a case for damages on the civil side, and cited Commyn's Digest Action on the case for conspiracy, A.

Justice Arnould threw out as a suggestion, that although the conspiracy was to intimidate witnesses in a civil suit, and there might be a remedy at the suit, the law as relating to conspiracy should be administered equally strong.

Mr. Bayley submitted that this Court would be guided by the law as laid down, and that it would not now be making a case by its decision. He submitted with due deference that were their Lordships to hold the indictment good, they would be making law instead of administering the law as it exists, for the only one legal authority referring to anything like the present case favoured his (Mr. Bayley's) argument. Assuming that the Court was against him he submitted that the first four counts were incorrect, the words "intimidate" and "prevent" being used in all, and unless those two words described a legal offence, the indictment would not lie. Now as to the word "intimidate" two counts in the indictment in O'Connell's case were held bad; Chief Justice Tindal's judgment on that point delivering the unanimous judgment of nine English judges was, that the word "intimidate" was not a technical word. O'Connell's Case, 11 Ch. Fin. 125. The context in the present indictment did not state what was an offence against the law.

Justice Arnould.—"Maliciously to intimidate and prevent" are the words.

Mr. Bayley.—Well, that states no offence whatever. If your Lordships declare that to be an offence in the statute, you declare that to be law which no judge in England or here ever before has declared law. If your Lordships will admit the validity of the argument against the indictment, I will move for a new trial on the following grounds.

Mr. Anstey said, that up to this moment the parties had not pursued the course they ought to have done to move the court for a new trial. In such a Court as this, an adjourned Court of Oyer and Terminer and Gaol Delivery, no motion for a new trial could be made. Mr. Anstey said that a new trial could only be granted on a *certiorari*. The case cited by his learned friend, Mr. Bayley—*The Queen* vs. *Rowlands*—was such a case; the 11 and 12 Vict. ch. 78, stated how a question of law might be stated, and the case of *The Queen* vs. *Miller*, cited, in the last edition of Archibald, illustrated it. Now what he (Mr. Anstey) submitted, was this: we are now before the Court of General Sessions of the Peace for the Town and Island of Bombay, and not before a Court of Queen's Bench, and therefore this Court could not hear a motion for a new trial. The Chief Justice sat not as one of the Court, but as an Assessor or Adviser.

Mr. Bayley said that his learned friend's argument did not apply here. If their Lordships were to refuse the motion, they would take away from the defendants convicted of misdemeanour, a right which belonged to them to have a new trial. In all cases of misdemeanour, after conviction the Courts may grant a new trial. And as to the present not being a Full Court, he (Mr. Bayley)

referred to a case which came on before Justice Arnould some months ago, in which he (Mr. Bayley) appeared for the prosecution, and in that case his Lordship the Chief Justice, gave judgment, and the prisoner was now suffering the imprisonment.

Chief Justice Sausse said he generally expressed his opinion. He was sitting as an Assessor merely, and where he coincided with Justice Arnould, it did not much matter who expressed the opinion of the Court.

Mr. Bayley.—This is really a branch of the Supreme Court.

Justice Arnould thought the difficulty seemed to rest in this way, the means of getting the case from the Court of Sessions to the Court of Queen's Bench in order for the motion for a new trial. The only consequence of deciding in favour of Mr. Anstey's argument would be that the Court would suspend the Court of Sessions, and would constitute a Court of Queen's Bench for the time being for the purpose of the motion.

Mr. Bayley called for their Lordships to adjourn the Court of Sessions, and to proclaim the sitting of the Supreme Court through the Court crier.

Justice Arnould said supposing the Court to be sitting as a Full Court of Queen's Bench, could it at this time take notice of the motion for a new trial without a *certiorari*?

Mr. Bayley argued that the difficulty lay in the variety of jurisdictions pertaining to this Court. By the charter the Supreme Court held Criminal Sessions, but it was still the Supreme Court. The very indictment before them was held in the Supreme Court of Judicature at Bombay.

But if the objection taken by the learned counsel on behalf of the prosecution be allowed, it might have the effect of depriving the defendants of that right which unquestionably they have to a new trial. This case was not a case in an inferior Court, but in a branch of the Supreme Court. Would a *certiorari* have the effect of bringing into Court that which was already in the Supreme Court?

Justice Arnould referred to the constitution of the Supreme Court. There was no special commission given the Judges for the Court of Oyer and Terminer.

Mr. Bayley thanked his Lordship. He was aware that the constitution of the Courts here was different from those in England. In England there were five special commissions for the Circuit Courts. Mr. Bayley referred to K. *vs.* Gompertz, vol. 9 Queen's Bench Reports, p. 824, where in a trial for conspiracy before Lord Denman a rule was made absolute for a new trial; and to K. *vs.* Whitehouse 1 Dean C. C. 1 where a new trial in a case of conspiracy was granted on the ground of surprise, and the Court would see that none of these motions for a new trial were made before the judge who tried the case.

Justice Arnould—In the case of *King* vs. *Mawbey* the question of new trials was very fully argued.

Mr. Bayley—Yes, and sustains my argument that every man convicted of misdemeanour is entitled to a new trial.

Chief Justice Sausse—You lay it down as an abstract proposition that every misdemeanant is entitled to move for a new trial.

Mr. Bayley laid it down as a general rule, when the case was either originally in the Court of Queen's Bench, or removed there by writ of *certiorari*.

Chief Justice Sausse said he only sat here at present as an Assessor. He knew nothing of the case except as he heard it from counsel. The matter must be brought before the Court in some way if the Judges sat as a Court of Queen's Bench.

Mr. Bayley thought it need not be by a writ of *certiorari*. In England the proceedings could only be brought to the superior from the inferior Court by a writ of *certiorari*.

Justice Arnould said the questions was, is the Court of sitting as a Court of Oyer and Terminer and inferior Court ?

Mr. Bayley—Certainly not. There was no more difference between this Court and the Supreme Court, than there was between the Supreme Court on the plea side and equity side. This Court was a Supreme Court on the criminal side, and is expressly so stated in the charter, and their Lordships had the full power which the Court of Queen's Bench in England hand.

Mr. Anstey, with regard to the remarks of the learned counsel moving for a new trial said, that their Lordships' attention had been directed solely to the charter. Now the charter had nothing to do with it. Their Lordships had five special jurisdiction, and when they were exercising the jurisdiction of the Court of Oyer and Terminer they were not exercising the jurisdiction of a Court of Queen's Bench. The motion for a *certiorari* ought to have been made before, and as it was not made, and as it was now too late for a writ to issue, motion for a new trial could not

be made. If the trial had taken place before their Lordships sitting as a Court of Queen's Bench, then motion for a new trial might have been made in Queen's Bench. His learned friend (Mr. Bayley) had moved the Court in arrest of judgment, as he had a perfect right to do, but he was not competent to go beyond that. In the case of *The King* vs. *Mawbey* in vol. 6, Law Rrports, it will be seen there must have been a writ of *certiorari*. The case of *The King* vs. *Oxford* was similiar. If the writ were now granted in this case, he (Mr. Anstey) could foretell no end of litigation at future criminal sessions when every prisoner, either personally or through counsel would apply for a new trial.

Justice Arnould.—A *certiorari* was issued according to practice only the other day by a single judge sitting as a Full Court. It was simply a writ from a superior to an inferior Court.

Chief Justice Sausse was of opinion that every person who was convicted of misdemeanour at the Assizes at home, here at Oyer and Terminer, was entitled to a new trial on good grounds.

Mr. Bayley had stated several grounds. He had been told that a *certiorari* was never applied for here.

Chief Justice Sausse.—The other day a writ was applied for in case of a corporation. The law compels defendants to appear in person, and as a corporation cannot be personally present, it was therefore thought necessary to bring the case where the defendant might appear by attorney or counsel.

Mr. Bayley said there was a clause in the charter which gave the defendants the privilege of appealing to the Privy Council; and certain

objections taken by him had not been decided by the Judge, and had not been argued so fully as they would have been if the points had not been reserved by the learned Judge for further consideration in case of a conviction. The defendants were greatly prejudiced, and it was little else than a fraud upon them to reserve certain points of law and afterwards refuse to have them argued and he and his learned friends were convinced that evidence had been most improperly received at the trial and that the conviction could not be sustained.

Chief Justice Sausse.—The Judge who hears the trial has the right of ruling different parts of evidence as it appears before him.

Justice Arnould said he took a note of the objection, and at the end of the Court gave leave to counsel to apply for a new trial in general terms. There was a concession given which ought not to have been given—that was all. The motion for a new trial must be disallowed.

Motion in arrest of judgment resumed.

Mr. Green, who appeared with Mr. Bayley, offered a few arguments in addition. The only case of obstruction of justice was such that from the nature of the case justice might be obstructed by the conspiracy. The learned gentleman said that the conspiracy to prevent, if sound at all, ought to be to prevent persons from giving evidence who had been lawfully summoned to appear and give evidence; he cited *Queen* vs. *Turner*, 13 East; *Queen vs. Epworth*, and other cases. Now in this case there was no lawful summons—only a personal request to persons to appear and give evidence. It was not stated that those persons were liable to appear and give evidence in this Court; and it

must be made to appear that such was the case. There was high authority in support of this point. (The learned gentleman cited *King* vs. *Pywell*, *King* vs. *Bellinger*, and other cases.) Really there was no case parallel to the present to be found in the law regarding persons conspiring to prevent a person from giving evidence. There might be an action as every one knows against the witness himself for damages, should he refuse to appear and give evidence. In vol. 7, Law Journal, New series, p. 1028, there was a case of conspiracy to abuse a process of the Court by putting it in motion; and in that case there was no summons, and therefore no damages. On those two points the use of the word "unlawful," and the second, the absence of a summons, the learned gentleman left the case to their Lordships' consideration.

Mr. Connon followed and said that he had a substantial ground for moving for an arrest of judgment. He was of opinion that the evidence did not disclose a criminal offence; he cited the case of *O'Connel*, when judgment was arrested, and he gathered from what Lord Campbell said on the occassion, that when the parties indicted had done what they had been conspiring to do they could be charged with obstructing the course of public justice. It was the first time in his life, continued Mr. Connon, that the editor of a native paper sought to be dignified by the publication of a libel, a suit for which is pending on the plea side of this Court. These parties, the present defendants, could have no direct interest in the settlement of a dispute between these two individuals. The only case which he remembered and which he thought bore a somewhat resemblance to this, was a conspiracy to hiss in a public assembly: but as that partook of a civil character it was only a

civil injury. It had also been suggested, observed Mr. Connon, that if the parties subpœnaed to attend did not attend, then there would be an injury, and an action may be maintained. He submitted to their Lordships that it did not appear by the indictment that the parties charged, were within the jurisdiction of this Court, and he hoped that the Court would take judicial notice of this objection. The Bhattias were a class of people numbering large, and the Court could only have jurisdiction over such of them as were within the town and island of Bombay, and therefore the indictment was faulty in this respect. He submitted that the Maharaj, the prosecutor in the plea suit, had just as much a chance in being bribed as any witness, and concluded his remarks by stating, that the evidence adduced for the prosecution did not bring home to the defendants a criminal offence.

Chief Justice Sausse.—The present is a motion to arrest judgment, and you cannot travel out of it. You are treating with the evidence brought before the Court at the trial, but which is not before the Court now.

Mr. Cannon.—I may ask your Lordships, what would be the consequence of finding these men guilty? It would only tolerate abundant prosecutions of this character, arising out of civil suits. There is not a case pending in this or any Court in which parties are not asked to give evidence one side or the other. It were better if each washed his dirty linen at home than come here to do so.

Mr. Anstey.—I shall confine myself, my Lord, to the motion for arrest of judgment. Before I enter upon it, I must ask your Lordship's leave to point out the fallacy of Mr. Bayley's and the other learned gentlemen's arguments. The indictment

would have been perfectly good had it omitted the overt acts altogether. It was only out of grace and favour that I did not press them to be made out stronger. The cases of *Queen* vs. *Brown* and others, and *Queen* vs. *Stapleton* and others, reported in 6 *Weekly Reporter* 1861, are in point. The Court on the occasion makes remark, that although it is not necessary to mention overt acts in the indictment, it may, however, be done. The defendants are not charged with tampering with witnesses in giving evidence, but they are charged with intimidating witnesses to give evidence. Away goes the objection just raised upon this subject. An offence to obstruct justice is not an offence in law! a witness cannot be a witness unless he is subpœnaed! he cannot volunteer to be a witness! why cannot the witness be voluntary? why is not the prosecutor prohibited in giving his evidence? The absence of a subpœna cannot affect the quality of the crime charged! My Lord, I think I have said sufficient against this frivolous objection. I now proceed to the other objection—a specious one. I find in that book, that conspiracy is a harmless word, but may be taken by the commentary in an ill sense. Objection has been taken by Mr. Bayley to the word "intimidate" in the indictment. What are words? They specify the meaning—they specify the purport, and they specify what is laid down. The introduction of the word "intimidate" does not affect the meaning of the word "prevent." (Here Mr. Anstey read the indictment.) The defendants attempted by certain overt acts mentioned in the indictment, to punish those members of their caste by excommunication on their giving evidence in the plea action. Your Lordship is bound to take judicial notice of this fact. Now comes an answer to another objection which is entirely frivolous. It is not for conspiring amongst

themselves, but for deterring others from giving evidence, especially of persons who are invited to give evidence. They are threatened with expulsion from the caste, also with the loss of certain privileges. The indictment says, "then and there witnesses." Another count of the indictment says, that the parties were to be prevented from giving evidence by a caste meeting. The overt act was, they did call a caste meeting, and the next overt act was, that at the meeting they proposed to take measures to expel from the caste any person who should give evidence on behalf of Karsandass Mooljee, the defendant in the libel action. The next overt act was, that they induced divers Hindu persons to sign a certain book by which they bound themselves to suffer excommunication in the event of their giving evidence against the Maharaj. This is a motion for arrest of judgment which cannot be entertained by the Court. As the verdict was a general one, and which I must ask your Lordships to infer from the very fact that the jury appeared satisfied on their returning their verdict. Strange's Hindu Law states the consequences of excommunication, and which is very severe; they are not only expelled from their caste, but they are prohibited from contracting the marriage of their sons and daughters. In the case of *O'Connel* the charge of conspiracy was to alter the law by intimidation and physical force: in this case the law was different and the charge was framed upon it. Now look at the word "prevent"; it has been used by pleaders since the earliest time. The objection that applies to intimidate, does not apply to prevent. Intimidate, it is argued, has no content, the counts all say "prevent from giving evidence." (Here Mr. Anstey read from the 2nd *vol. of Russel on Crime* and cited a case.) Where a person is charged with conspiring to prevent a

tailor by indirect means from carrying on his trade, the presiding Judge——held that the indictment was good.

Chief Justice Sausse.—I do not think, Mr. Anstey, that it was suggested that the word "prevent" in the 5th indictment was not good.

Mr. Anstey here read the 5th indictment and said.—Every overt act charged in the indictment was proved in the evidence at the time of trial; the jury found guilty on the word "prevent." There is no ground for criticism in the way the jury found the verdict, or in the way the Clerk of the Crown framed the indictment. We are not living in an age when a trifling error of law can destroy an indictment. Assuming all, however, to be true, there is no defence whatever to the four corners of the indictment. (The Judges were consulting and Mr. Anstey stopped his address.)

Justice Arnould.—I was drawing his Lordship's attention to Lord Campbell's Act which empowers the Judge to couple hard labour with the sentence if convicted of preventing, perverting and defeating the ends of justice.

Mr. Anstey.—Open conspiracy by means of force and threats of a barbarous, aye, and uncultivated race are crimes of an uncivilized epoch. In former days the star chamber was resorted to to effect intimidation of witnesses, but in the present day, a constable is sufficient to put to flight a number of intimidators. Since the star chamber has been done away with, we have had charges of perjury, subornation of perjury. In the present case we have had, as your Lordships know, rich men as the defendants: the prosecution has been

costly to the prosecutor and laborious to ourselves, and it will be dangerous to Government to let such go unpunished. In the case of *King* vs. *Mawbey* there was no distinction of a penal character, and it was the only way in which the jury understood it; the case was a trial for a conspiracy to obtain a false certificate. In the case of *King* vs. *Mawbey* these parties did conspire together to obtain a false certificate: the second count was with intent to deceive the Court by producing a false certificate, and the third count was somewhat similar. *Lord Kennyon* says that the offence may be an indictable one. . . . . [Mr. Anstey referred to the following cases, *Queen* vs. *Roebuck*, *Queen* vs. *Roberts*, p. 129, *Queen* vs. *Eagleton*, p. 80, and others.] . . . . . Assuming that a man can commit a fraud which could be tried only on the civil side, still there are cases (the present is one) which are indictable and punishable. Defamation, libel, conspiracy may be made the subject of an action at law, and they may consistently be put on the criminal side of the law. What do we know but that the prosecutor is gaining by this act of the conspirators? In a criminal action, the injury done is done to the Queen. She has no right of action in a case of tort. I page of the state trial. In the case of *Haines* it was contended that a defaulter to the Queen could be actionable at criminal law, but of a private person or company he cannot be Assuming the indictment to be true. there has been an attempt to impoverish him—an attempt to dissuade others from giving evidence, and an attempt to get witnesses to swear to what is false. The very case cited by my learned friend in Strang's Hindu law is against him . . . . . absence of all precedent in dealing with men at the bar; prisoners are called upon to answer.

Mr. Dunbar—My argument is in reference to the argument of Mr. Bayley. In O'Connel's case the jury found a verdict upon some of the counts, and as it was a special verdict a new trial was allowed; but in this case the verdict was general, and therefore no new trial can be had.

Mr. Bayley then replied and said, there was no authority to support these various counts. The counts in the indictment in O'Connel's case all relied on the same matter: the same words were used in all by means of "intimidation"; and all were upheld by the judges, though they found fault with the jury. (The learned gentleman cited cases). The Court's attention had been called to the word "intimidate" and "conspire." Now the word "intimidate" only meant an improper action. The word "conspire" no doubt meant an illegal action. The nine judges were unanimously of opinion that there was no technically bad meaning to the word "intimidate." Mr. Anstey had said that the purport of the word was the essence of the word. That was mere quibbling. The opinion of the judges was that "intimidation" was not an illegal ward.

Justice Arnould.—The defendants are here charged with intimidating by means which are set out following; there is a great difference.

Mr. Baylay said one count in the present indictment was a conspiracy to intimidate the whole world—to prevent all members of the Bhattia cast from giving evidence; it was too general. The indictment did not even state that these persons were in existence—no averment of that: it says, "certain" persons. Now it assumes that there are "certain" persons. The arguments taken by his

learned friend, Mr. Green, were good, and had not been answered. These persons had not been summoned: then the indictment did not state that those witnesses were alive or were within the jurisdiction of the Court, or were willing to come forward and give evidence. The indictment raised up a certain class of people as existing in order to charge them with being intimidated by the defendants. Now the persons may be at Poona or in England. there was no averment that any other supposed witnesses were within the jurisdiction, or that they were summoned or able to attend, and it was consistent with the averments that not a single witness could or ought to attend. He cited K. *vs.* Stevenson, 2 Hast. 362, where the witness intimidated had been duly summoned according to law.

Chief Justice Sausse.—The conspiracy, as the counts allege, occurred within the jurisdiction; and it don't matter where the persons are.

Mr. Bayley said it did with his argument. Supposing there were 10,000 people in Cutch, and there was merely a meeting in Bombay to try to persuade those people from coming here, surely the calling of that meeting would not be an illegal act. The count did not state that that evidence was material. And there had not been a single text-book or decision shewn to make the act an illegal act. Then much had been said of the word "prevent" which he (Mr. Bayley,) contended in some cases meant "assist" We have a collect, said Mr. Bayley, beginning with "Prevent us, O Lord" &c. &c., which plainly had this meaning, and surely those good men who composed it had as good a knowledge of English as we ourselves have.

Justice Arnould—Do you mean to say that "intimidate and prevent" in that collocation the word "prevent" means assit?

Mr. Bayley did not argue that. He thought some other word ought to have been used. The word had not that comprehensive meaning that "murder," and such other words, had. As "conspiracy," as his learned friend had said always had a bad meaning. Now, in this charge, there were four words used—combine, conspire, confederate, and agree together, that the case should not, if possible, slip through. Now the indictment should have gone on and stated the overt acts and damages done. For argument, he would assume that an actiou in the nature of a conspiracy would lie if damages had accued: it followed that a person would have a remedy for years before the time when he might have a right of action, which right of action might be successfully defended. It is perfectly consistent to say that no injury has been done to the prosecutor, public justice, or any thing else. It was not shown that what the defendants did in any degree affected the case, or that a single witness had been intimidated. No harm had been done—it was an abstract proposition laid in the indictment, and not supported by any authority. There was a verdict, and their Lordships could not alter that verdict. He thought judgment had not been received here.

Chief Justice Sausse said he understood the present motion was in arrest of judgment.

Mr. Bayley said the verdict was general, and therefore the Court could not alter the finding. The jury had been discharged without being asked on which Count they convicted. Judgment was bad, and should be arrested.

Justice Arnould said the Court did not consider that sufficient grounds had been shown for arrest of judgment. After enumerating the counts, and the overt acts which were to carry them out, the learned judge said this appeared to him to be an offence at common law. There was an action brought before Her Majesty's Supreme Court for redress of a wrong, it was necessary that the Court should proceed in a certain way, among other things have the evidence of witnesses, to do justice; and any attempt to change that course was an attempt to prevent that Court from doing what it was appointed to do, justice. Now an action was brought by the Maharaj for the redress of what he felt a wrong, and then intimidation is offered to those witnesses by his devotees to prevent them from appearing in Court and giving evidence. Now it would be a very great injustice, to hold that a man who has to defend himself against a serious charge in the Supreme Court has not the right to defend himself. It clearly did not make any difference whether the defendants carried out their plan or not, or whether the present prosecutor had a remedy at civil law. The parties suffering had a right to call upon the aggressors to account for their misconduct. With regard to the mere technical objections which had been taken, the learned judge said there was nothing in them. The whole gist of the case was in the word "combination." In a case cited it was not clearly shown what the meaning of the word was, but the case here was totally different—it was to intimidate and prevent by means which were set out, so that there was no possibility of vagueness. It also appeared to the learned judge that it did not matter though the witnesses were not summoned. The essence was the combination for a common object. The quality, kind, and nature of the offence was

the same, though the degree might be mitigated. The verdict was general. In his Lordship's opinion each count was good. Judgment had not yet been entered up.

Mr. Anstey asked that judgment might be entered up on each count.

Mr. Bayley requested as a matter of right a new trial for the six defendants whom he represented, and he also moved on the ground that the points had been expressly reserved for argument by Justice Arnould.

Justice Arnould said that question had been decided.

Mr. Bayley asked the Court merely as a matter of form preliminary to further proceedings. He had understood that the question of a new trial was not fully decided.

Mr. Anstey pleaded for judgment on the defendants.

Mr. Bayley said he wished to call a few witnesses as to character.

Mr. Anstey took some objection, when

Justice Arnould asked if he (Mr. Anstey) had not asked for mercy for the defendants for the Saturday when they were convicted?

Mr. Anstey said he had, and although he would not retract, yet the prosecutor and all concerned in the prosecution had received nothing but sneers from the defendants in consequence of the appeal.

Messrs. J. Cassels, M. H. Scott, T. F. Cray, J. Bevis, R. Hannay, merchants of high standing were called on behalf of the defendants. Most of them spoke to an acquaintance with the de-

fendants, for terms of ten, fifteen or twenty years, and to the high character they bore in the mercantile community.

W. Crawford, Esq. Senior Magistrate of Police, was also called, and said that he had known Ragoo Shamjee he believed for twenty-two years. Defendant was one of the mildest mannered men, and one of the gentlest men, he ever dealt with.

Bayley made a few remarks in mitigation of punishment, on the position of the defendants, the novelty of the offence, the absence of any proofs that the defendants most of whom only spoke their native tongue, knew they were doing wrong; and with all deference submitted that a very light sentence would meet the ends of justice.

Mr. Anstey said that after this he would retract every word he had said on Saturday in favor of the prisoners (Sensation and strong expressions of dissatisfaction.)

Justice Arnould in sentencing the prisoners, said: Gentlemen of very high respectability in this community have just been heard to give you a high character, and of the perfect truth of their evidence I have no manner of doubt. From the beginning to the end of this trial there has been no imputation upon your character as peaceably disposed and orderly persons. The charge against you is this: that a person whom you hold in the highest regard has brought an action in this Court for damage on account of publication of an article charging him with adultery and other immoral practices. The editor of that journal when the action was brought against him, as one of Her Majesty's subjects, he had a clear right to do, put on the records of this Court a plea to defend him-

self at this trial. I have no doubt but that you have been put up to do what you did do, by Parbhoodas who was managing this case. That plea has been represented as an attack—it is not an attack, but a defence, as you were perfectly well aware of. And you being men of respectability as you are, could not have been so perfectly ignorant as not to know that bribing a witness was an offence; it was then endeavoured to prevent truth and justice from being done by another course. But although in Courts the allegation of belief cannot exclude or mitigate punishment, I am not going to exclude human nature in the sentence I shall now pass upon you. In passing sentence I have two extremes to guard against; on the one had I am not going to pass a sentence which will seem vindictive, while on the other hand I must avoid the appearance of overlooking the facts as it would seem to exclude the whole truth of the prosecution. It is fitting that you should know the law of England on this offence as applicable here, and I will read it by way of a warning against any future crime. (His Lordship read from Lord Campbell's Act, the law empowering judges to couple hard labor with imprisonment for the whole term of sentence). That is the law. I don't intend on this occasion to avail myself of the power given. The sentence of the Court upon the two leading men, you Gocouldass Lilladhur, and you Lukmidass Damjee, is, that each pay a fine of Rs. 1000; and the seven other defendants each a fine of Rs. 500. [The fines were immediately paid and the defendants left the Court with their friends.]

There was great confusion in Court when the sentence was proclaimed, but the noise was suppressed without trouble, when.

Mr. Anstey applied to have the costs of this case from the Fine Fund. Mr. Anstey stated that the costs already amounted to about Rs. 4000. Mr. Anstey was told to make the application to the Full Court.

The application was accordingly made on Thursday, the 19th December, and the Court ordered Rs. 1000 to be given to the prosecutor out of the Fine Fund.

THE TRIAL OF THE MAHARAJ LIBEL CASE.

SUPREME COURT.—PLEA SIDE.

(BEFORE A FULL COURT.)

Jadoonathjee Brijruttonjee Maharaj vs. *Karsandass Mooljee and another.*

Mr. Bayley, with *Mr. Scoble*, instructed by *Messrs. Collier and Leathes*, for the plaintiff.

Mr. Anstey, with *Mr. Dunbar*, instructed by *Messrs. Acland and Prentis*, for the defendants.

First Day, Saturday, 25th January 1862.

Mr. Scoble opened the case by reading a portion of the pleas.

Mr. Bayley—"In this case I have the honor to appear with my learned friend Mr. Scoble to ask your Lordships for damages for a most wanton and unprovoked libel published on the 21st October 1860 in a native Guzerathi newspaper, the *Satya Prakash*. The plaintiff your Lordships will see from the plaint, bears a high character amongst a certain class of people, and as the case presents some circumstances of a peculiar character, and as this is the first time that any one of the Maharajas

have sought redress in a court of justice, the plaintiff is subject to all advantages and disadvantages attendant upon it. Also amongst others of being examined and cross-examined on the part of the defendants. Now your Lordships will see that a person situated as he is, respected and revered among numerous followers in Bombay and other places, it becomes a matter of importance that the practice set forth in the pleas should be proved. He, of course, would have abstained from bringing such an action, so confident is he of the falsity of the allegations that he is disposed to risk every thing, but it is important for him to vindicate his character. Your Lordships will see that he could not well remain silent. The case before the Court on the part of the plaintiff is a simple one; but before I proceed to the question of libel I may inform your Lordships that the plaintiff is a person of thirty-four or thirty-five years of age, and that he resides for the most part in Surat, occasionally coming to Bombay. Though not educated in the European sense of the term, he is conversant with several native languages; he has always taken an interest in the cause of native female education, which alone gives him respect and honor in this country, and speaks volumes in his favor. He seeks redress through a proper channel, to which he is justly entitled. With these few introductory remarks, let me call your Lordships' attention to the libel itself. I shall not at first enter at all into the rebutting proof of the evidence which may be brought forward, the burden will lie upon the defendants, as they are going, I believe, to justify the libel. It is unnecessary to trouble your Lordships with the case, as one of your Lordships is already cognisant of the particular facts and circumstances in the demurrer case. The authorized translations shewn in the plaint itself is in these terms:—

[Mr. Bayley here read before the Court the alleged libel.]

"Now your Lordships will see that the article divides itself into two parts. The first part is to a certain extent historical; in the second, the writer singles out the plaintiff, and in company with other Maharajas charges them with the most filthy and obscene conduct; now that that is a libel, I apprehend your Lordships will have no doubt. I will read *Addison on Wrongs*, p. 578. 579, from the chapter on libel and slander. It is there shewn that every publication making a person's society shunned and avoided is a libel. To publish and say a man has insulted two females and thereby to make his society shunned, is a libel. Those cases cited by me are merely foot-notes, to show what constitutes libel in the opinion of learned judges in England. The defendants have filed justification. I am prepared with a certificate to prove that Karsandass, one of the defendants, is the publisher of the libel. Hearing his admission in a recent case that he was the publisher, and the other defendant the printer, I need not put myself to the trouble of proving the printer and publisher.

"The sixth plea is as to so much of the alleged libel. I think a special traverse as to its being properly translated will have no effect, as I am of opinion that it is correctly translated by Mr. Flynn, the official translator. The seventh plea goes into minute circumstances, and details a horrible character of the plaintiff. That disposes of all the other pleas. I submit that unless my learned friend is prepared with substantive justification, this is clearly a case for damages. The burden of proving every substantive plea of the allegations rests with my learned friends on behalf of the defendants. The plaintiff is not actu-

ated by any vindictive feelings; he does not require substantial damages; nominal damages and an apology would satisfy him, and save trouble to the Court, and much annoyance to the feelings by the recital of horrible details. If the defendants do not choose to retract, I am prepared to prove my client's case, and to rebut at the proper time the allegations set up for the defence. I will ask my learned friend if he admits the publication and printing of the libel, and also that the publisher and printer are the defendants."

Mr. Anstey—"I admit all. No doubt there was a publication. I deny all inuendoes; I deny that it is a libel, and assert that it is a privileged, justifiable communication."

(1) *James Flynn*, examined by Mr. Scoble.—"I am the chief translator and interpreter of this Court. I produce a copy of the *Satya Prakash* of the 21st October 1860, and an official translation of an article headed "the primitive religion of the Hindoos and the present heterodox opinions." It is a paper in the Gujarathi language and character, printed and published in Bombay. The translation is correct, and according to the best of my ability.

Cross examined by Mr. Anstey.—"I see the equivalent of a passage bracketted in the original 'Maharajas acting up to the commentary desist from the defilement of the wives and daughters of your devotees, &c. (Witness was examined as to the grammatical construction of the above passage in the vernacular language.) The word Maharaj is used in the vocative case. The "Brij Bhasha" language is not court language, and in my opinion it is not a language in which translations have to be made.

To the Court.—"The 'Brij Bhasha' language is an ancient dialect of India; it is not a spoken language now, but a written one.

Re-examined by Mr. Scoble.—"The article which I have translated is in the Gujarati language, and not in the Brij Bhasha language.

To the Court—"The Character of the Brij Bhasha is somewhat similar to the Sanskrit.

To Mr. Scoble.—"The original seat of the Brij Bhasha language is round Agra in the North-West. In the native newspapers punctuation is not carefully marked. Looking at the passage translated in sixth plea, I think it forms two sentences; and I hold that view notwithstanding the omission of the full-stop."

(2.) *Gopalldas Madhawdass*, examined by Mr. Bayley.—I am the head of the Mahajun or a Banian caste of all denominations. They are numerous in Bombay. Mahajuns are Banians assembled in a meeting. It is necessary to obtain my permission to hold meetings of caste. I know the plaintiff Judoonath Brijruttonjee Maharaj, who is about 40 or 42 years of age. He occasionally resides in Bombay at intervals of 10 or 20 years. He is a resident of Surat. The Banians and Battias consider the Maharaj in very good light, and respect him. (Mr. Anstey objected to the last statement of the witness, and read the 355th Section of Taylor on Evidence to show that the plaintiff cannot give evidence of good character or conduct unless the countrary has been offered or alleged against him. The learned counsel alluded to some cases in point, and remarked they were not to be got over by any explanation of his learned friend. Mr. Bayley said the question was not as to character. He would call attention to the 4th plea, which stated "the plaintiff is not a high priest of high

Caste" &c. Sir Joseph Arnold.—Taylor has laid down the rule in reference to aggravation of damages. I understood the question in a spiritual light. I thought there was a misunderstanding on the part of the witness, and that's the reason I asked him if he spoke of Maharajas in general. Mr. Anstey.—I have no objection as to his position among the Maharajas. I object to his personal character being reffered to.) The plaintiff is a Maharaj: he is our gooroo or spiritual guide, who worships our idols and performs divine service. The Maharaj is a Brahmin, and is above the ordinary run of Brahmins. Some Brahmins who receive a particular religious character from him regard him as a gooroo. The Bhattias are worshippers of the Maharaj. The Bhattia caste is different from the Banian. They respect the Maharajas equally as their gooroos. A gooroo performs divine service and worships the images. The Maharaj might preach sermons, But I am in the habit of going to him only three or four times in the year. The Brahmins read the Purans and other religious books to the people. The Maharajas occasionally read the Purans, but are generally engaged in worshipping the images. The Maharajas have temples in Bombay: there are sometimes two, sometimes five, and some times ten, and perhaps more Maharajas in Bombay. Some permanently reside here, as, for instance, Jeevanjee Maharaj. In India, I believe, there are now about 60 or 70 Maharajas. The Maharaj at Sreejee is considered the chief; he has a temple at Nathdoowar, near Oodeypore, in Northern India. The Maharajs are spread over the cities of Hindoostan. The rajahs and native princes respect the Maharajas in the same manner as the devotees do. I have resided all my life in Bombay. I am a subscriber to the *Satya Prakash* newspaper. I may have read the

articles upon which this action is brought. The *Satya Prakash* is now amalgamated with the *Rast Goftar*.

Cross-Examined by Mr. Anstey.—I have never been to the principal seats in India, nor have I seen the Maharajs worshipped by the rajahs, and what I have said about the Maharajas is what I have recollection of an unpleasant controversy which was going on in 1911–12 (1855) between the Maharajas and the Brahmins. The controversy related to our religion; I was engaged in it against the Maharjas. I don't remember Lallmuneejee Maharaj issuing an order eight years ago, calling upon members of his caste to repair to his house and to give him presents; neither did Lallmuneejee Maharaj give such an order ten years ago. I do not recollect incurring the displeasure of Lallmuneejee for denying his right to ask for presents. I have not heard of the complaints among the Vallabhacharyas of the adulterous practices of the Maharajas with their wives and daughters, but I have read some complaints in the *Satya Prakash* and *Parsee Punch*, which I first began to read about five or six years ago. I have not signed a paper prepared by the Maharajas binding me, to implicit obedience, especially with reference to these accusations ; but many persons have signed such a paper, which I have heard was prepared by the Maharaj. I have heard from the Banians, members of the sect, that an engagement has been entered into by Banians, Bhattias, and all the sects to do their utmost to prevent the Maharajas from being called as witness in a court of justice. This engagement has been designated the 'slavery bond' by those printers and newspaper writers. I can't say whether others call it so. I have not signed this bond. It is true

that to get the bond signed, the Maharajas kept the temple closed eight days. This was about four years ago. I do not know of any attempt being made by the Maharajas to get Karsandass excommunicated from the caste of Banians for writing articles against them. Such an attempt was made. Two persons came to me and said that as the Bhattias had made an arrangement we should make it also: this was but a day or two after the signatures were obtained, to intimidate witnesses to give evidence in this case against the Maharaj. One was Purbhoodass, and other Jaykissondass. They are both Banians, so am I, and so is the defendant, Purbhoodass is the person who is managing the case for the plaintiff in this present action, and is sitting down in Court behind the professional advisers on the part of the plaintiff. He came to me once only about the business of excommunication. I said that if what Karsandass had published is false, the Court will punish him. I refused to interfere, as the Maharaj had brought an action against him: they went away. I can't say that they knew whether I was going to give evidence for the defendant in this action. The Maharajas are not the preceptors or spiritual guides of all the Hindus, but only of the Bhattias and Banians and Brahmins. The majority of the Banians believe in the Maharajas. Some of the Banians are Jains. Jain Banians don't believe in the Maharajas. I have not heard of any Banians regarding the Maharaj as almighty God incarnate in the flesh. I cannot say whether Bhattias regard the Maharaj as the incarnation of the Deity, but some may believe in the Maharaj as the incarnation of God, while others do not. [Mr. Anstey.—Do the whole sect of Vallubhacharya regard the Maharajas as Gods?] I cannot say what they think. Some people do say that they are

gods, while some deny that they are. (Mr. Anstey here read a portion of so much of the first averment of a plea to the witness in which the doctrine of the sect was laid down.) It is the opinion of the Vallubhacharyas, that the Maharajs and their descendants are incarnations of Bramah and Vishnu, deserve to be worshipped with the mind, property and body of their followers. I believe it to be a sin of the gravest character to neglect this worship. I cannot say if it is the duty of female devotees (as stated in the plea) to love the Maharajas and to be connected in adultery and lust with them. If such doctrine or passage was shown me in any of the books I call Shastras, I would take it as good and true. Referring to the "bundobust" (arrangement) I meant to refer to the Conspiracy Case of the *Queen* vs. *Goculdass Leladhur* and others. I heard the arrangement was to prevent any person from giving evidence here on behalf of Karsandass: and the "bundobust" I was asked to sign was to the same effect. The Maharajas decide caste disputes, and also themselves fall into caste disputes. I do not know if some castes have had to complain of the Maharajas seizing the property of widows and orphans; I have never heard such a thing. The Maharajas have temples in Bombay: sometimes when there are marriages and such occasions, dancing and singing go on in the temples; but not in the part where the idols are kept. Prostitutes are invited on such occasions to dance in the temple. Prostitutes are also invited to the party In those temples the Maharajas worship the idols, and men and women worship, sometimes, the Maharajas. They prostrate themselves at the Maharaja's feet. By worshipping the Maharaj, I understand applying to him scent and stuff, and offering him fruits and flowers, in the same way as the idols are worshipped. When we fall down

before the Maharaj, he blesses us. One mode of worshipping the idol is by swinging it, and our women worship the Maharaj by swinging him in a swing. On certain occasions the Maharaj throws *golal* (red powder used during the Holee holidays) on the person of men and women. It is thrown from a distance, and it may fall upon the necks and breasts of women. It is not considered among our people equivalent to adultery to throw *golal* on the breast of a woman. If any person throw *golal* on the breast of a woman, our people don't consider it indecent or shameful. I do not know if other people consider so. I have not heard of any Maharaj touching the breast of any of my relatives or of any other female. The *pan soparree* thrown off by the Maharaj is taken in hand and eaten by his devotees. The water rinsed and wrung from the Maharaj's *dhotia* (trowser) is drunk by his devotees and is known as charnamrut, *i. e.*, ambroisa or the nectar of the feet. Some portion of the remnants of the food eaten by the Maharaj is eaten by the followers. The water with which the Maharaj bathes is not drunk. I have been only three or four times in the year to visit the Maharaj. The Maharaj sees men and women in the same open space. I don't know if there are rooms of the Maharaj to which females only have access. If the Maharaj has a family, he keeps a separate "zenana" in the temple. I do not recollect whether two or three years ago a meeting of the Bhattias was held with the view to prevent females from going to the Maharaj in his private rooms.

Re-examined by Mr. Bayley.—"Plaintiff was not in Bombay four years ago. People of our caste follow the customs and usages of our ancestors; while some others follow the Shastris and

religious instructors. They take their opinions from the gooroos or Brahmins. I have never been to a dance at the Maharaja's temple. The Maharajas usually reside in the Temple on one side, or in a separate dwelling-house, sometimes in a place within the compound, and sometimes in a house opposite to the temple. There are doors and entrances between the house and the temples. The dances take place in the house on one side. and sometimes in the compound of the temple. All nautch-dancers in Bombay are prostitutes, Nautch dances are frequently given by respectable persons on occasions of the celebration of marriages and other events. The plaintiff is married and has children. The Maharajas object to come and give evidence in courts. They would not incur anybody's displeasure if they came here; but as they might be detained two or three days, they would be prevented from the usual ceremonies and practices in the temple. When I say "worship the Maharaj," I mean that when we wish to invite the Maharaj to our house, we fetch him to our house, we offer him flowers, wave a light round him, present him money, and prostrate ourselves at his feet. We do not worship the God; the Maharajas do that. They bathe the image in several ways: they wash it in saffron, flowers, &c., dress it, wave a light round it, and then men and women go to worship before it. None touch the image except the Maharaj and particular servants of his, who are appointed to the office. The *golal* is thrown about during the Hoolee festival: it is a kind of powder prepared from wood called "Patanghee." It is usual among the Hindus to throw it: it is an ancient custom, and I cannot explain it. Now I am an old man, and I don't throw it: when I was young I used to do so.

To Sir Joseph Arnould.—"When I said two people of the caste came to me and said "the Bhattias have made "bundobust," and that we ought to make "bundobust" also," I indended "we" to mean the Bania caste.

To Sir M. R. Sausse—"When I say "worship the Maharaj," I don't mean to say it is the same thing to worship the Maharaj just as he worships the image: there is a slight differance between the two. The image is bathed and dressed, and food is presented to it; but the same is not done to the Maharaj. The Maharaj eats of the food presented to the image, and also distributes it among the Vyshnavas.

To Sir Joseph Arnould.—"When the Maharaj worships the image, I consider him to worship God. When I wave the light round the Maharaj and prostrate before him, I don't consider him as an incarnation of the Deity.

To Sir M. R. Sausse.—"I have said there are some of the Bhattias and Banias who consider the Maharaj as an incarnation of God. I cannot say if the majority or minority of the Bania caste hold that creed. I cannot say if the number of persons holding such belief has increased or diminished within the last few years."

(The Court rose at 5 P. M.—Throughout the day the hall of justice was excessively crowded by followers of the Maharajas, and peace was maintained by a select band of European of the Mounted Police Force.)

Second day; Monday, 27th January, 1862.

(3). *Jumnadass Sevaklal*, examined by Mr. Scoble.—I am a *shroff* and a member of the Laud Bania caste. I am not a shet of my caste. I know the plaintiff, who is our Maharaj. He

instructs us in our religion. I have read the article in the *Satya Prakash* containing the libel for which this action is brought. I was a subscriber to the *Satya Prakash*. This is a copy of the *Satya Prakash* of the 21st October 1860, in which I see an article about the primitive religion of the Hindus. I observe in it the name of Jadoonathjee Maharaj introduced, the plaintiff in this case. I have not heard of any other Jadoonathjee Maharaj.

Cross-examined by Mr. Anstey.—" I give as much respect to this Maharaj as to any other; but the love of the people towards him, since the publication of this article, has somewhat diminished. I remember his arrival from Surat about two years ago. I have not heard of any complaint from Jadoonathjee, since his arrival that people did not respect him and the other Maharajas as they ought to do. (Mr. Anstey hands a paper to the witness, and repeats the question.) I don't remember to have ever read this paper before. I have not heard of Jadoonathjee complaining of the neglect of his followers towards himself and other Maharajas, previously to the year 1860, and before the arrival of plaintiff, I did not hear the Vyshnavs complain that the Maharajs did not give them proper instruction and advice in matters of religion. We used to go before the Maharajas, to prostrate ourselves before them, to go to the idol and to return. They did not give any other instructions execpt those connected with Brahma. Those instructions are given only once in a life time. Plaintiff used to say that if the Vyshnavs came to him and asked him any thing, he would answer them. Plaintiff did not, to my knowledge, complain that they did not come to him. I have

not heard him say so. I did not hear the plaintiff say that he would give instruction to those only who came to ask him. I have not heard the Maharaj say that, according to the Shastras, the *gooroo* should not give instruction without being asked by the pupil, nor that, giving instruction without being asked is to give food to one who is not hungry. The company or society of Vyshnavs, not the Maharaj, published a religious magazine. The Society is known as "the propagator of the Vyshnav religion." They inserted my name and sent me message to the effect that I was made a member of the Society. Plaintiff is at the head of the Society. I have not heard that Jadoonathjee has called upon all the Vyshnavs to come forward and support the magazine, nor have I read a handbill to that effect. I do not remember the name of the magazine. I believe the name of the magazine is "Svadhurma Vardhak" (propagator of our religion.) The Vyshnav families in Bombay are numerous. I cannot say if they are ten thousand. The Marjadees (strict observers of ceremonies) are the Bhattias. I have not heard of Jadoonathjee complaining that, out of so many Marjadees, only one hundred have subscribed to the magazine, and that, out of so many Banias, only 120 have subscribed thereto. I have not heard him complain so. The Maharaj does not practise any tyranny, what tyranny is it? By connection with Brahma I mean the chanting of mystic verse relating to the worship of Brahma. I don't read Sanscrit. By God I mean Krishna. The verse was not explained to me in Gujratee. I believe the meaning of the verse was once explained to me by some Brahmin. In my opinion, the Maharaj is a representative of Krishna (This answer was extracted from witness on the threat

of a fine of Rs. 100 from the Bench.) It is not that I hesitate to answer these questions against the Maharaj, for the fear that I may be born again in the condition of a bird or dog. [Mr. Bayley objected to the Court being taken into such excursive details. Sir M. Sausse remarked that the libel was of such an extensive nature, that the Court must go into the details. The objection was overruled. Mr. Bayley again objected that this line of examination was not pertinent to the matter at issue. Sir M. Sausse.—What is the question? Mr. Anstey.—That Krishna is your protector, that therefore you surrender to him your mind, body, wealth, wife, sons, children, and every thing else? The objection is overruled.] Yes, the sense of this Sanscrit passage is, that Krishna is my protector, and that I, who am destroyed by internal misery and pain, do surrender to Krishna my mind, body, my breath, my heart, my feelings, as also my wife, my house, my children, my relations, my wealth, and other worldly things, together with my soul. Some five or seven thousand Banias assemble at a caste feast. Besides these there may be five or ten thousand Jains. It is true that about half the Bania caste (the Jains) don't believe in the Maharaj. There are two sects of Banias—believers and unbelievers.

Mr. Anstey.—Do some Banias believe the Maharaj to be a God?

Witness.—"We consider him to be our gooroo.

Sir M. Sausse.—Tell witness if he does not answer the question, he will be sent to jail.

Witness.—"What is the precise question? (Interpreter explains) Some consider the Maharaj a god in the shape of gooroo.

Mr. Anstey,—Is Gooroo a God ?

Witness.—" Gooroo is gooroo.

Sir M. Sausse.—Tell him if he does not answer the question. most indubitably will he go to jail.

Sir Joseph Arnould.—Tell him he is asked what others believe, not as to his own belief.

Witness.—I don't know if others believe him as God; I consider him as simply a gooroo. I don't know under what name others worship him. There is no "bundobust" in my caste, to prevent witnesses from giving evidence in this case on behalf of Karsandass. I was not asked to join in such "bundobust." I have not been to the plaintiff's attorney to give instructions,—I went to him for my own case which is pending. I am not a Marjadee. I don't know of my caste people going to the "Rasmandalee." I don't know what sort of thing it is. There is no festival among the Vallabhacharyas in which married men and women mix promiscuously in a room. I may have read in the libel article a reference to the Ras festival; but there is nothing of the sort in my caste. I do not know anything of the history of the Vallabhacharya sect. My only reason for believing the Maharajas to be of high caste, is that even Brahmins believe them. I don't know if those Brahmins are few or many. The Maharjas are originally Telinga Brahmins. I don't know if the Maharajas, on account of their practices, were outcasted by the Telinga Brahmins for some hundred years. I don't know if they are so outcasted at present by the Telinga Brahmins. I have never heard of a Maharaj intermarrying in a Brahmin family. Males and females of my family visit the Maharaj. We worship him when he comes to our house :

we don't go to his house to worship him. I have not at any time swallowed the spittle and leavings of *pan soparee* thrown out by the Maharaj; but I have sometimes partaken of the remnants of his food. My family may have eaten the leavings of his food but not the *pan soparee* thrown out. In the month of *Shrawan*, the image is swung in a swing; if the Maharaj also sits therein, we swing him. The females of my and other families have swung him. The Maharaj has thrown *golal* on thousands of females, not the females of my family alone, By Thackorjee I mean Krishna. I don't think that throwing the *golal* makes women pregnant. It is not the fact that young men throw *golal* and not the old. Throwing the *golal* has no relation to sexual intercourse. I would consider it a great insult for any other person, but the Maharaj, to throw *golal* upon my wife. Throwing *golal* from a distance I don't consider as an outrage upon chastity. (Witness is fined fifty rupees for not giving a direct answer.) I cannot explain why it is an insult to throw *golal* on a female at any other time but the Holee holiday. I have not heard any complaint of the Maharajas handling the breasts or necks of females in playfulness. Complaints similar to this have been published in the *Satya Prakash*. I have not read the *Parsee Punch*, the *Sammachar*, or the *Sammachar Durpun*. I subscribe to the *Jame-Jamshed*, but don't recollect reading therein any thing of the kind, (Mr. Anstey reads a list of all the vernacular papers.) I have not read any of these papers. I subscribed only to the *Satya Prakash* and the *Jame-Jamshed*. Mr. Anstey hands witness an article published in the last-mentioned paper six or seven years ago, containing an *expose* "which must put to shame the followers of the Maharaj.") I don't recollect having read this article.

Re-examined by Mr. Scoble.—"I have been asked as to swinging the image and the Maharaj. It is a ceremony performed on certain religious and festival days. It is performed publicly, in the presence of men and women belonging to the Vyshnav persuasion. Throwing the *golal* is also part of our religious ceremonies during the Holee holidays. The *golal* which remains after throwing over the idol, is thrown over the worshippers. [Mr. Scoble.—You are fined fifty rupees for not understanding why it is an insult for a stranger to throw *golal* upon your wife. Sir M. Sausse.—Mr. Scoble has misunderstood why the witness was fined fifty rupees. It was for evasion, prevarication, and delay. Sir Joseph Arnould.—The Court would not fine a witness for not understanding a question, and your assuming that it did so fine him, is assuming what you have no right to assume. Mr. Scoble offered an explanation, and the examination continued.]—"If the Maharaj or Gosaei handled the breast or neck of a female, it would be considered adultery—not so his throwing *golal* on females from a short distance. I have been present at the marriages of Maharajas. It is not lawful for a Brahmin to marry out of his caste.

To Sir M. Sausse.—"As we cannot touch and swing the image of the Deity, we swing the Maharaj. When we do so, we regard him as our gooroo. The Maharaj is the only gooroo of those of the sect who wear "Kantees" (necklaces of beads,) and who are known as Vyshnavs."

(4) *Vurjeevandass Madhowdass*, examined by Mr. Bayley.—"I am a justice of the peace of Bombay. I belong to the Bania caste. I know the plaintiff. I have known the plaintiff these last two years since his arrival in Bombay. I am a shet of my

caste, and one of the members of the Mahajan. The Maharaj is a priest of the Bhattias, Lohanas and Banias. The plaintiff is a gooroo or spiritual guide and Brahmin by caste. He is in a higher position than the ordinary Brahmins. The Maharajas are looked upon as descendants of the Vallabacharyas. The plaintiff has no temple in Bombay. Maharjas are looked up to with respect by the Hindus, particularly by our sect.

Cross-examined by Mr. Anstey.—"I deny that I was ever called upon to give evidence in a court of justice against a man charged with double murder. My name was not mentioned in a native paper in regard to that matter. I have seen a paper containing that charge signed by Mr. Fojett. That was about five years ago. I am brother of the witness Gopaldass Madhowdass. I do not know whether my brother was in opposition to any of the Maharajas, except to Jeevunjee Maharaj, in respect to a dispute between some Brahmins. I do not know the history of the sect of the Vallabhacharyas, nor whether he was the son of one Luxmon Bhut. Maharajas were originally Telinga Brahmins, but have not heard that they are outcastes. I have not heard that Brahmins eat with them. One-half of my caste are Jains; they do not worship the Maharaj; they are Buddhists. some worship the Maharaj as well as Shiva, and those who worship Vishnu, have a reserved worship for Shiva. Some persons when they abandon the worship of Shiva, worship the Maharaj. I do not know whether the Raja of Porebunder was disgusted with the worship of a Maharaj on account of his immoralities. I do not know why a Maharaj was flogged by the Portuguese authorities at Daman. An application was made for the release of a Maharaj who had been imprisoned at Jalua-

patan. The Maharajas adopt sons from their own sects, and they become priests by adoption. It may be criminal in the eyes of the Hindu religion to expose the vices of their parents, but I do not consider it so. The Maharajas wash their own bodies on their birthdays or religious days, and we throw saffron and other scent on their persons. The image, too, is washed with saffron water on these sacred days. The females also sprinkle saffron on the Maharaj's person and they consider the touching of his feet as sacred. I do not know if the dust on which he walks is regarded as sacred. If a Maharaj dies we do not say he is dead, but that he has joined play or amorous love in heaven between men and women. I am not able to state whether it is a part of our sect that Krishna had intercourse with 16,000 women, and that they had salvation thereby. I do not know that the Maharajas are called the Avtar of the Maha Prabhoo. The Maharajas have imposed a tax on the gains of the Bhattia and grain merchants that fall on the community. There was a meeting held at the plaintiff's house for considering the re-marriage question and opposing it. I do not know when the *Vishnu Punch* was started. I have not drunk the water wrung out of the Maharaj's lungotees after bathing, nor that with which his right toes are washed. Some people drink such water. I have not signed the "bundobust" to help Karsandass in this action, nor do I know if my brother has signed it. I know only from the newspapers that my brother was asked to sign it. I signed a document by which we agreed that no members of the caste should call upon a Maharaj to give evidence in a court of justice; if they did so they would be expelled. we intended also to memorialize the Judges of the Supreme Court, and if this Court did not grant

us exemption we would appeal to the Privy Council to be relieved. The temples were closed for 8 days in order that the followers should sign the document. Maharajas visit the steamers, shops, and nautch parties, but do not like to come to this Court as they have not done so from time immemorial. (Mr. Anstey.—How do you say time immemorial, when your sect has been in existence only 400 years.) Our sect has been in existence only 400 years. Goverdhanathjee Maharaj was a large trader; he received visits from and paid visits to Parsee and Mahomedan traders. I know nothing of the Mahomedan mistress of Vachallalji Maharaj. I do not know if there is such a book containing verses written by the plaintiff. I have not read it. There is a separate zenana where all the ladies go to visit the Maharaj's wives. The devotes are allowed to see the image eight times a day. I have sometimes heard that women's dresses are handled indecently in the crowd, and their persons disgraced. In the winter the men and women attend at so early an hour as 4 o'clock. I did drive the Maharaja's carriage as coachman ; I do not consider it disgraceful to do so. I did not slight the late Governor Lord Elphinstone while driving in public in order to pay respect to our Maharaj. Before the publication of the libel I have read in some of the papers that the Maharajas were in the habit of committing adultery. This was about 4 years ago. There was a talk amongst members of the Vallabhacharya caste. I do not know if any replies were made to this. There was a talk, I believe, among the Bhattias that their females should go at proper hours to the temples of the Maharajas. The women were to go only in the morning and evening. This was about ten months ago. I am not on bad terms with the defendant, I have been attacked by him in his

newspaper. The attack was made on account of some caste disputes. I took no notice of the article. I do not read the doctrines of my sect; I learn them by hearsay from the Gujerati Brahmins.

Re-examined by Mr. Bayley.—"I am still a justice of the peace, and do not think my character injured in any way by what is called the double murder by Government or any other body. The charges were without foundation. I have merely heard that the Maharaj was found dead; I know nothing further about it. The plaintiff said if the Shastras allowed him to support the re-marriage of widows he would allow it, but if they did not allow, he would not allow it. There was some discussion, but I have not heard how it was settled. *Vishnoo Punch* means Vishnoo assembly and not a caricature. These articles that I saw had no effect on my mind as to the character of the Maharaj. I frequent the Maharaja's temple. Several people are kept at the temple to keep order. They regulate the admission of people into the temple. They enter into one passage and go out of the other. The defendant attacked me three or four times in his paper, but I thought the attack too contemptible to notice it."

Third day, Tuesday, 28th January 1862.

(5.) *Runchor Munjee* examined by Mr. Bayley.—"I am a merchant, and have visited many parts of India on pilgrimages. I have been to the great cities on the banks of the Ganges and the Jumna. I have not been further than Porebunder towards the West. There were Maharajas in many of the places I visited, in others there were not. I believe there are in India some 40 or 50 Maharajas. There were two Maharajas at

Benares. In a religious point of view, the Hindus, as well as the native princes, regard the Maharajas as gooroos. The Maharajas are Brahmins, and are looked up to and respected by other Brahmins.

Cross examined by Mr. Anstey.—" The whole world say that the Maharajas are Brahmins. I don't know if they are outcasted Brahmins. I have not heard so, I have not been to Telinga country : it is said the Maharajas belong to the Telinga country. I have had no conversation with any Brahmins about the Maharajas. I used to see many Brahmins sitting at the Maharaj's when I used to visit him, sometimes five, sometimes ten, sometime twenty-five. I can't say if they were there for asking alms, they often come to me for alms. I never saw a Brahmin eating with a Maharaj. I am a Bania and a Vyshnav. I have dim eyes and am not now able to read. I have read the story of " the 84 Vyshnavs," also " the story of the 252," (witness does not say 252 *what* !) I have read another book called the " Instruction Paper." I have not read any of the literary publications of Jadunathjee, the plaintiff. I have read, either in the 84 book or the 252 story book, the story of Krishnadass carrying his wife on his shoulders for the purpose of her fulfilling an adulterous engagement which she had made with another Bania. [Mr. Anstey.—Is the conduct of the husband approved or censured in the book ? Mr. Bayley objects to the question being put; his learned friend might as well examine the witness on the contents of the Bible. Mr. Anstey read a few sentences from the plaint, showing that the question was necessary to disprove an allegation in the plaint. The objection was overruled.) The conduct of the husband, the wife and the third party in the story is praised. The good faith of

the wife to her promise is particularly praised. I don't know the story of the Bheel who killed his wife for adultery with a Thackorjee, who re-animated the wife and stamped her as a virtuous woman. I am ignorant of a story in which a Maharaj declined to commit adultery with one Gunga in a privy, but afterwards made her pregnant in a dream. Not being acquainted with the Shastras, I cannot say whether or not these stories are repugnant to religion or morality in one sense. I ought to act according to what is enjoined in our Shastras, but I think one ought to be mindful of his belly before he learns the Shastras. I do not know the ten principles of the Vallabhacharyas. [Sir M. Sausse suggested if Mr. Anstey would think it necessary, to swell the depositions with the negative answers of the witness. Mr. Anstey.—This witness is called by the plaintiff to show the morality of the life which the Maharajas lead, and the high respect in which they are held, and I am bound to show the contrary. The witness seems to know nothing, and yet he is called to give opinions on the virtuous life of his spiritual preceptors. My client being poor, it is unfortunate for him that the trial should be lengthened over as many days as the plaintiff's advisers could possibly do so. The objection was overruled.] I do not consider my gooroo to be an incarnation of the Deity. I cannot say if other men believe so. I am not a "Varkat," or a beggar who goes on pilgrimages. He begs only when necessary. Varkats are of the Lohana, Bhattia, and other castes. Some of them marry, others do not. A man can marry after having turned a Varkat. I have not heard if the Varkats act as procurers of women for the Maharajas. I have been present when the Maharaj has attended the silk bed of a dying person. I have heard that the

Maharaj puts his foot on the breast of the dying person. I have not seen him do so. For putting his foot in this manner, the Maharaj gets from five to twenty-five rupees or any other amount, according to circumstances. He gets the money as gooroo. I know the festival called the Ras festival, which is held at uncertain periods. Married and unmarried people of both sexes go as spectators to the festival. I am talking of the drama. I don't know what is called the "Ras mandali."

To Sir M. Sausse.—"The story to which I alluded is a sacred story and is so considered among my sect. The man had come to the wife's house, she gave him food, made an engagement with him to go to his place and fulfilled it. It was, I presume, an adulterous engagement. The wife's conduct is praised in the story for keeping her engagement with the man, who was a hermit holy man.

To Sir Joseph Arnould.—"It would not be considered in my sect a good thing if a woman visited a Maharaj for a similar purpose. The woman in the story did what she thought proper.

To Sir M. Sausse.—"The husband on hearing of the wife's engagement, said to her "I consider you now as my daughter;" and the hermit, on hearing what had occurred, said to her, "You having fulfilled your enagement, I regard you as my daughter."

To Sir Joseph Arnould.—"The moral of the story is that all the three parties were true to their faith as regarded the enagement.

To Sir M. Sausse.—"I believe, from the hermit having called the woman his daughter, that no sexual intercourse took place.

Mr. Anstey.—Was it the Bania or the hermit who said to the woman, "I consider you as my daughter?"

Witness.—"It was the person from whom she brought food for the holy man.

Mr. Scoble.—Your Lordship will find when the story is produced, that this man has told it all wrong!

Sir Joseph Arnould.—I don't think it is worth following it up. It is a story without a moral after all!

To Sir M. Sausse.—"The holy man asked the woman for food; she had no food in the house; it must be provided somehow; she went to a Bania for it, and it was to the Bania she made the engagement. The hermit ate the food; and when she went to the Bania, he (the Bania) said he considered her to be his daughter."

(6.) *Sevdass Mohunjee*, examined by Mr. Scoble.—I am a member of the Bhansalee caste, and carry on a general trade at the *bunder* in the name of my sons. I know the plaintiff in this case. He and the other Maharajas are regarded in the light of gooroos amongst our caste.

Cross-examined by Mr. Anstey.—"My caste is divided into four different sections. My caste numbers ten or twenty-five thousand persons towards Cutch. The people of my caste don't follow one sect; some are called Ramanundee, Shaïves, &c., but they do not regard the Maharaj as gooroo, they simply respect him. I don't know if others of my sect believe in the Maharaj as a God. I have never read any books of my sect; nor heard them read. I don't know what the doctrines of my sect are. I have heard the "Bhagwat" read by Brahmins. The Maharaj tied the bead necklace round my neck when he told me I should do what

was right. That was the only instructions I ever got from the Maharaj in my lifetime. I pay my respects to the Maharaj; I don't worship him. I have never drunk the water from his "lungotee," nor swallowed his spittle."

(7.) *Gungadhur Nanackram*, examined by Mr. Scoble.—I am a member of the Mesree Marwaree caste. I belong to the Maharaj sect. There are not many Marwarees of my sect in Bombay. Other Marwarrees belong to the Maharaja's sect. There are Maharajas in Shreejeedwar and Joudpore. They are regarded as gooroos.

Cross-examined by Mr. Anstey.—"I cannot say how many of my sect there are in Bombay, perhaps ten, twenty, or fifty. I don't know the number of the Maharaja's sectaries in my native country. I regard the Maharaj as my gooroo. I cannot say what the consciences of others are."

Mr. Bayley.—That is the case for the plaintiff.

DEFENCE.

Mr. Anstey submitted to their Lordships as a jury, not as the Court, that there was no case made out by the plaintiff, and that, therefore, the defendants were entitled to a nonsuit. He trusted their Lordships would not hold that there was some evidence to go before a jury; and even if *they* did, that they would dismiss from their minds the seventh and eighth pleas and issues raised upon them, and would return a verdict upon the facts as regarded the first issue. To support this proposition he would cite the case of *Robertson* vs. *McDougall* (4th Bingham,) the doctrine laid down in which has been followed ever since. And it is so laid down by Mr. Wingrove Cooke in his work on Libel, *viz.*, that it is not for the Court to give any opinion, at an early stage

of the proceedings, upon the justification. Mr. Anstey would ask for a nonsuit on the first issue, that of not guilty, on three grounds. First, he would say this document (the article) was not a libel, and *per se*, secondly, that the plaintiff has not proved his inuendoes, not a single inuendo, whereby the libel is pointed; and thirdly, that the document, as appeared from the evidence of the plaintiff's own witnesses, was published upon justifiably grounds and upon a justifiable occasion. If their Lordships should think that there was some evidence, however infinitesimally small, to go before the Court, then he must say he would take the benefit of these observations. He urged, however, that he was entitled to the Court's verdict on the first issue. On the second issue, though the plaintiff produced no proof, or rather the proof produeed by him disproved his plaint, Mr. Anstey would say it resulted upon the evidence that these persons called Maharajas, most improperly so called, are not the preceptors of religion, and none of them has any right to sue in that character. There is no evidence offerred at the Bar to prove, there was some apparently to disprove, that they are high priests. The sect of the Vallabhacharyas is a contemptible sect of 400 years old, and not an ancient ruling sect, as the plaintiff has averred. Mr. Anstey said the first five issues were proved by plaintiff's witnesses for defendants; and he did not prove some issues at all. The learned counsel's two objections were that the libel is not a libel, and therefore, *per se*, the Court ought to regard the libel as it is, without any regard whatever to the inuendoes. The plaintiff has not proved the characters he ascribes to himself in the plaint; his witnesses have proved that he has them not, and, therefore, he has no right in any of those assumed characters to sue. Before pro-

ceeding to read the material portions of the libel, Mr. Anstey wished to have the libel entered as read along with the documents to which it refers; otherwise he should object to its being entered as read.

Mr. Bayley.—The learned counsel may put what construction he pleases; the libel has been entered as read.

Mr. Anstey.—Then the documents to which it refers must be taken as also read.

Mr. Bayley objects to the proposal.

Mr. Anstey.—Then I insist upon the libel being read, and I will make my objections.

The Prothonotary reads the article containing the libel.

Mr. Anstey applied to have read the documents in which Jadoonathjee says that "in the same way as some one goes from the gates of the Fort to proceed to Walkeshwur, and some one to Byculla," &c., and also the commentary of Goculnathjee referred to in the libel. The learned counsel applied on the ground that the plaintiff is bound to produce all references in the article of which he complains. His not having produced them had deprived the defendants' counsel of his right of referring to and commenting upon them. In support of his argument the learned gentlemen cited *Soloman* vs. *Lawson* (15th vol. Law Journal) in which the Court held that there was variance, owing to one of the letters only being produced, and no mention made of a second letter in the count, which was referred to in the first. Lord Kenyon held that the other letter ought to have been also set out.

Sir M. Sausse.—They both together made a libel, and, therefore, it was argued that one ought to have been incorporated in the other.

Mr. Anstey.—I rely much more on the second case, *Cartwright* vs. *Bright*, in which it was laid down as a maxim. What I am arguing for is this, that according to these cases, references in this document ought to have been set out. The libel is said to be against the sect, against every member of it, and against the plaintiff!

Sir M. Sausse.—The libel does not say that Jadoonathjee wrote the reference. The words are "Jadoonathjee says"; it does not show he wrote anything.

Mr. Anstey.—Very well, my Lord, then I proceed to the other reference to Goculnathjee's Commentary. The first thing to be proved is the libel, and then it must be shown with what intent it was written. "Holding improper and heterodox opinions"—that is what plaintiff is charged with in the first part of the article.

Sir Joseph Arnould.—Defendants are debarred from asking for the reference, from all the works of Goculnathjee, they select a passage in point to explain their meaning.

Mr. Anstey proceeded to comment upon the different inuendoes, remarking that none of them was proved, and therefore the Court had no evidence before them of the *sensus verborum*. The Court has no judicial knowledge of what the religious opinions of the sect are; there is no evidence to show what the doctrines of their religion are, and, therefore, as regards the *sensus verborum*, the case fails. What is left to juries at home in such cases is—Given the sense, the plaintiff's meaning of the inuendo, was it in that sense that the words were written or spoken by the defendant of and concerning the plaintiff? and, then, whether the construction put by the plaintiff is borne out by the evidence. In *Staple* vs. *Jones*, it

is laid down that if the meaning of the defamatory matter be obscure and cannot be made out, the alleged libel is nonactionable. In England, the rule is to take the words in their ordinary, popular sense. Now, what is the sense of heresy, heterodoxy, &c.? In this country, interpreting such terms, the Court must take the surrounding circumstances into view.

Sir Joseph Arnould.—We don't know what heterodoxy is, and we don't know what heresy is; for we don't know what the Shastras themselves are.

Mr. Anstey said it appeared from Brooke's Reports that one of the courts in England refused to enter on its record an action in which a clergyman of a certain persuasion wanted to sue, and referred him to the court having proper cognizance of the matters concerned. What, then, is the course to be adopted? The popular meaning is taken, the witness is asked if there is anything to give another meaning to the words, and, then, what did he himself understand by them? Their Lordships could not read the Purans, or read the doctrines of modern times, to be then able to say what the heresy referred to in the libel is. There was no evidence to show what the heresy consisted in. There was evidence the other way. It was the evidence of witnesses that plaintiff's religion is of a modern date, and consequently he has established no standard.

Sir M. Sausse.—There is, Mr. Anstey, great difficulty in the question. The standard is not proved, nor is it proved when the Kali Yug set in.

Mr. Anstey.—I say, my Lord, the libel is not alleged and proved.

Sir M. Sausse.—As at present advised, we should read the clause leaving out the words

"Shastras" and "Kali Yug" There is no evidence to show what they are.

Mr. Anstey.—The *onus* of proving every inuendo lies upon the plaintiff where the inuendo is material. I have already cited two cases to show that, and there are two other cases to which I will now refer, *Griffiths* vs. *Lewis* (8 2. B. R.) and *Galway* vs. *Marshall* (9 Excheq. 94.) This brings me to a proposition to which I would call the serious attention of your Lordships, and to which I did not do justice in the recent Demurrer case. It is that, although it is competent to a person in his private character to recover damages, if the libel refers to his professional character, he cannot recover any, unless he prove—by first laying the foundation of proof by showing his professional character—what damages in his private character he has sustained by the libel. (Cites *May* vs. *Brown* and comments upon the points raised therein.) No evidence is given here to show that the Maharajas would be subjected to any punishment by the publication of the alleged libel. In the case I have cited, evidence was given of practices inconsistent with the doctrines of the Roman Catholic religion, and it was urged that the plaintiff would incur the displeasure of his superiors, and yet the court granted a new trial for the important defect on the record. Nothing could compensate for such a defect on the record. The court held,—How could the words be actionable, for the *manner* in which the plaintiff could be injured was not shown, either in his private or professional character. Here there has been no averment of the manner and form in which the libel would have damnified the plaintiff, but positively he has given evidence to show that the witnesses treat the libel with great contempt.

One of them says that although, since the publication of the libel, love towards the Maharaj has diminished, yet that respect has not. But there is no evidence of the *manner* in which the love has been lost, nor to show *whose* love is meant. There is an utter absence of the averment both of manner and of form.

Mr. Anstey had not done with his able speech; and the Court rose at half-past 5 P. M.

Fourth day, Thursday, 30th January, 1862.

Mr. Anstey, resuming the thread of his observations of the previous day, alluded again to the case of *May* vs. *Brown* and cited two other cases, *Lewis* vs. *Walton* and *Herne* vs. *Stovell*, enlarging at some length upon the principal points mooted in each. A much more stronger case than *May* vs. *Brown*, a case long subsequent to it, was that of the *Queen* vs. *Burdett*, in which Lord Teignmouth remarked that all the facts descriptive of the offence should be set out on the record, as also all the references if they contained new matter. The learned counsel repeated, with fresh illustrations, what he said on a former occasion, pointing out the only difference between an action of libel and an action of slander.

Sir Joseph Arnould.—Is your view somewhat this?—When a libel is alleged against a person both in his private and official character, it is no libel unless it is stated on the record how he is injured in both capacities.

Mr. Anstey stated this was shortly the substance of his argument. It was no libel to say of a clergyman that he was a "stupid fool," though it would be libellous to impute to him practical adultery. It is not actionable to say of a man in his clerical capacity that he is a robber and a cheat,

though the same words applied to a tradesman would be indubitably libellous. According to the principles of the cases cited by Mr. Cooke in his book on libel, it is libellous to publish of a gunsmith that he shoots out of a leathern gun; to say of a Roman Catholic priest that he tries to convert Protestants by promises of money; to say of a newspaper that it is low in circulation, although it is no libel to call it vulgar and scurrilous; or to publish a story which may make a man ridiculous although he may have told it himself. Another objection closely connected with the last one is this: Supposing all that the learned counsel had said, went to nothing and that it was necessary to proceed with the case in spite of the want of proper averment, the objection was that the plaintiff could not carry the libel further than the class to which it belongs. No doubt it is true that a libel on an individual may be a libel on a class; but the averments being made, they are to be proved as such. That is the very point decided in *Palmer* vs. *Malcolmson*, the principle maintained being that, where the class is referred to, it must be proved that it is a libel on an individual. In all these cases, the surrounding circumstances must be looked to; and this argument the learned counsel applied to the whole of the plaint. He said this was not a case in which, without looking to the surrounding circumstances, the Court could give its opinion that it was not a libel. This was properly a question for a jury. The plaintiff is bound to show how he is damnified in his private and his official capacities; and no introductory matter or inuendo can change the burden of proof. The parts of the libel where the plaintiff is referred to, are parts where, the learned gentleman submitted, no libel certainly could be found. His name first occurs in an abstruse allusion to the

doctorines of the Shastras and the latter days of the Kali Yug, which may be summed up thus: "the sect of the Maharajas has arisen in the Kali Yug, therefore, according to the doctrines of the Shastras, it must be false. Jadoonathjee says that the original courses of the Veds and Purans having gone forward, have diverged into different ways. What a deceitful proposition this is." There is nothing libellous in all this. Sir Robert Philmore was a maintainer of all the filthiest abuses which disgraced English leterature, and Mr. Locke did a public service in exposing and censuring such writings. Would any Englishman think Mr. Locke ought to have been prosecuted in an action of libel? The critic does great service to the public when he exposes a stupid book, and if the writer of it suffers any loss, it is a loss of fame and of profits to which he was not entitled.

Sis M. Sausse—In the Demurrer case I expressed an opinion that the first part of the article is a common and historical comment; and brother Arnould coincides in that opinion.

Mr. Anstey therefore proceeded to the latter part of the libel in which the plaintiff is directly referred to: "Jadoonathjee Maharaj! should you wish to propagate or to spread abroad religion, then do you personally adopt a virtuous course of conduct, and admonish your other Maharajas," &c. This passage and others are hypothetical statements and not a libel upon the class at large or upon any one individually. If the plaintiff makes the cap fit him—

Sir Joseph Arnould.—There is no inuendo that the exhortation to adopt virtues personally, implies the absence of them in plaintiff.

Mr. Anstey remarked the defendant's object in writing down the doctrines of the sect was

two-fold: first, because they are heretical, and secondly, because they were such as must lead to greater and more serious immorality hereafter. Some of the allusions were introduced merely for the illustration of his argument. It is a great amplification of the original stanza, says the libel, to say that the meaning of it is. Give your wives to adultery and your daughters to whoredom. What evidence the plaintiff has given is in favour of the libel, and the learned counsel would submit that if the doctrines mentioned in the criticism were contained in the sacred books of the sect, there was nothing adduced against the libel itself. "In the Kali Yug many other heresies and many sects have arisen besides that of Vallabhacharya, but no other sectaries have ever perpetrated such shamlessness, subtility," &c. The words in the passage are the *sect* of the Maharajas, not the class. The entire sect is hinted at, the sect of Vallabhacharyas or the Maharajas. The plaintiff sought to narrow and extend the meaning of "Maharajas" in the plaint and in the libel respectively. This inuendo, Mr. Anstey hoped, the Court would not allow. He would say the true meaning of the above passage is:—Of the many sects which have polluted India, none have exceeded the Vallabhacharyas as appears from their sacred books, and particularly the passage in the Commentary of Goculnathjee, to which reference has been made. He goes on to say:—"When we use such severe terms as these, our simple Hindu friends are wroth with us." What friends, the Maharajas? no, but the entire sect—"we have to grieve over our Hindu friends and over their weak powers of reflection." Connecting the whole of the passage with what follows, it is nothing more than a hypothesis—"Should you wish to propagate," &c., "then do you personally adopt," &c. "But

when throwing dust in the eyes of simple people, the Maharajas write about enjoying the tender maidens," &c., "great flames spring within our inside, our pen becomes heated and on fire." Is this libellous? The learned counsel could not think it was. If the Court decided otherwise, he thought that the whole body of missionaries from the East to the West, who preach against the immorality of heathenism or the debaucheries of these monstrous religious preceptors, would be brought up for libel every day! The defendant, being a member of the Vallabhacharya sect, has a distinct, a direct interest in the debasing practices of his brethren, as well as a general interest which any rightminded person must feel in the cause of morality and virtue. The above passages, the learned counsel contended, were based upon hypotheses or suppositions. The libel proceeds. "Your ancestors having scattered dust in the eyes of simple people, made them blind." Do you wish to make them see, or taking a false pride in the upholding of your religion, do you, (Jadoonathjee Maharaj) wish to delude simple people still more? A natural question to one who set himself up to propagate his religion! "If you wish, then, do you personally adopt a virtuous course of conduct?" Is that libellous? Why the *Times* newspaper for several days admonished the Prince of Wales to persue the paths of virtue and morality, and has he sued Mr. Walter for a libel? This part of the article is but an advice, a recommendation, to the Maharaj to adopt a line of conduct which shall distinguish him from the rest of his brethren and from the upholders of the doctrines of these pestilential books. Why, here is the plainest language as language can be. "Do you adopt a virtuous course of conduct, and admonish your *other* "Maharajas." The meaning of this exhortation cannot

be mistaken. There was another inuendo, to which great weight was attached in the Demurrer case, and to which Mr. Anstey now called the Court's attention, *viz.*, as to the character of the Maharajas as religious preceptors. That inuendo was not proved: on the contrary, it was disproved by plaintiff's own witnesses. There must be a proof of the averment tendered; but no experts had been called, no witnesses had been called to prove the Maharajas to be the preceptors of religion. Those who had been called, said they did not know what the doctrines of the Shastras are. One said he had no time for enquiry; he did not know what the Shastras said, and followed the customs and usages of his ancestors. Another said the Maharajas gave no instruction; it is the Gujeratee Brahmins who read and explain the Shastras. Another said the Maharajas never taught any thing, nor did they ever preach. The vast majority of the Hindus follow the original religion of India, and, do not recognise the Maharajas at all. To prove that they are the preceptors of such Hindu religion, it ought to be proved that they preach any religion at all. No averment was tendered by the plaintiff on any one of these material points; and a nonsuit must be allowed for want of a proof to sustain it. Returning from this digression to the libel itself, the learned counsel said the next passage must be read as follows:—"You Maharajas! Who, acting up to that commentary of Goculnathjee, defile the wives and daughters of your devotees, desist from that, and destroy at once immorality such as that of the company at the Ras festival. As long as you shall not do so, for so long you cannot give religious admonition and propagate your own religious faith. Do you be pleased to be assured of that." Now, what is in this passage to connect the plaintiff with it?

There must be something laid by the plaintiff before the jury to show that it is meant as a general aspersion upon his own character and that of the other Maharajas. Considering the context, asked Mr. Anstey, is that even a libel upon the class? The meaning of the passage is this. "You (Maharajas) have put forward certain books in which adulterers and adultery are praised, and you allow your followers to read and believe in those books. Unless, therefore, you repudiate these doctrines, the cause of religion will not advance. Do you be assured of that!" That's meaning of the passage, that is what the writer meant to express. If the sacred books of the sect are of that kind; if the defendant, from an early period of his life, knew that the books of the sect contained more than permission—an injunction—to the crime of adultery where the adulterers are the Maharajas, then, said the learned counsel, it fell within the bonds of legitimate criticism for the defendant (a member of the sect) to say that these were the doctorines inculcated to the followers of his sect. The official translations of the libel, Mr. Anstey proceeded to observe differed; and the meaning of the passage was so given in the plaint as to fix the inuendo upon the plaintiff and the other Maharajas. The construction which Mr. Flynn, when in the witness-box, put upon the passage was inconsistent with itself and with the context.

Sir Joseph Arnould.—Mr. Flynn was positive that there was a full-stop before the word "Desist."

Mr. Anstey said the passage must be read as he had given it above; the other constructions of it was inconsistent. In no part of the plaint was it averred that the plaintiff was charged with adultery. According to the principles of the cases already cited, the *sensus verborum* must be, first,

clearly ascertained; the libel must be proved in the sense in which plaintiff understood it; and there must be a distinct averment. Unless these objections could be answered, the case was already made out for a nonsuit. All that the defendant had said, came within the legitimate range of criticism. Following up his argument, Mr. Anstey asked, who ever heard of an action of a priest against a person or a person against a priest? and he submitted there was nothing more in this. It is in evidence that the defendant is a member—a protesting member—of the sect; he wishes to remain amicably with its members, but has no desire to remain unreformed and unpurged of those abominations, in which some of the members notoriously engage. If there have been publications on one side, there have been publications by the other also. These question of adultery, of blasphemous adultery and sacrilegious pleasure have for some months filled the columns of native newspapers, tracts, and magazines, and the plaintiff himself was the originator of some of them, and took part in the discussion. Such is the complexion of the times, which have come groaning for reform, and the defendant finds himself in the capacity of an instructor and a teacher to his less fortunate castemen. He has denounced gross abuses. In the deplorable state of things by which he was surrounded, he felt himself called upon to write, under the inspiration of his better nature, which has been cultivated more or less by the precepts of our own moral philosophy and probably our own better faith. The counsel said, the occasion was justifiable, and such as would justify much more stronger language than had been used for the reformation of public abuses. To support his argument that publications for the exposure of public abuses and for the public good, are justifiable, Mr. Anstey

cited from Mr. Starkie's book several cases in point, *Hugo* vs. *Spanier*, *Somerville* vs. *Hawkins*, *Harris* vs. *Thomson*, and others. The same doctrine is laid down by Mr. Cooke, and also in the general work on Torts by Mr. Anderson. In one of these cases, Baron Parke held that honest communications for the common welfare of society must be protected. If *prima facie*, it is so, it is incumbent on the plaintiff to give evidence of malice, in which case the defendant would have to prove the innocence of the words used by him. But a mere excess of words is no evidence of malice, as appears from the cases of *Cooke* vs. *Wyldes, Taylor* vs. *Hawkins*, &c. Mr. Anstey had now gone through all the leading authorities, and had only to remind the Court that the allegations of the plaint entirely disproved were the following:—the all-important allegation pointed to by the inuendo as the Kali Yug : the characters of the Maharajas as preceptors of the Hindu religion: that the plaintiff is a high priest of a high caste. The learned counsel had every reason to rely upon a nonsuit being entered.

Mr. Dunbar, arguing on the same side as Mr. Anstey, addressed to the Court a few arguments on the question whether there was any libel. The passage alluding to the plaintiff was not directed to himself personally, but to the sect of which he is a member, and referred to him as one who had come forward to propagate his religion. It calls upon plaintiff, and says that if he wishes to propagate and spread religion then he must adopt such conduct. It appeared, upon plaintiff's own showing, that this passage was addressed not to him, but through him to the whole sect. If it reflected upon him, it did so only upon his character as a preceptor of religion, but on this

later point the Court had no evidence at all. Unless there was sufficient evidence to show that the libel, pointed to plaintiff as a preceptor of religion, the Court would be justified in entering a nonsuit. The learned counsel referred to the case of *Solomon* vs. *Lawson*, remarking that it applied to this case. If the plaintiff said the inuendo was pointed to him alone, the whole case falls, because there is no personal imputation upon plaintiff in the libel, (Cites and comments upon *Smith* vs. *Kelly*, 3rd Campbell, 460.) The only case against the arguments for a nonsuit was *May* vs. *Brown*, which however, was not generally cited, and did not affect this case in reality. The plaintiff could not recover any damages unless he showed how the libel affected him personally, and how as a preceptor of religion. There was no evidence whatsoever to support any of the averments, while the statement of and concerning the plaintiff must be taken as affecting his professional character. On these grounds, and others which Mr. Anstey had so ably and fully argued, the Court must nonsuit the plaintiff.

REPLY.

Mr. Bayley, in reply, stated he would notice one or two points, and if the Court decided in favour of either of them, there would be no necessity for him to go further. It had been said by both the learned counsel on the other side that *May* vs. *Brown* was not recognised as an authority, but he would say his researches had been more fortunate, and it appeared that the case was often cited by Baron Parke and others. Several of the cases which were cited by the learned counsel were decided previous to the modern system of pleading, and this system was adopted here by the 166th Common Law rule of 1884. That rule is appli-

cable to this country and the members of the Bombay Bar were under no necessity to resort to the pleadings of ancient times. (Calls attention to a para. in the pleadings of the time of William IV. as to actions on the case.) The plaintiff was only here to prove the issue between the parties and what was not expressly traversed. The learned counsel cited *Drummond* vs. *Pigot* (2 Bingham,) in which the action was brought for an unfounded and malicious claim of debt. Now, the learned counsel's proposition according to the decision in this case was, that all introductory averments, not traversed, are admitted on the record. It had been held by the learned Chief Justice in this very case, that the introductory averments are not material and are admitted generally. They are necessarily admitted in the plea of not guilty put in by the defendants in this case; and in this view Mr. Bayley said he was fortified by the judgment given by the Chief Justice in the Demurrer case on the 18th July last. (The learned counsel cited *Watkins* vs. *Lea* and another case from Meason and Wellesley's reports.) Let us ask the question, said Mr. Bayley, who are the Judges or what is a libel and what is not? The Court, as jurors, were constitutional Judges of facts. The sum and substance of all the arguments addressed to the Court for a nonsuit was, Is there a case to go to the jury? Their Lordships had to define the libel, and say whether it was a case to go to a jury or not. The Court must not be asked to say what must come out at the close, and these lengthy arguments of the learned counsel might well have been reserved for a motion in arrest of judgment. Coming to the inuendoes, Mr. Bayley said an inuendo is only explanatory of some matter; It cannot add to, or enlarge upon. what has been stated; it cannot extend the sense,

and is an explanation of what is said before. There was no inconsistency in any one of the inuendoes in this case; in the first part of the libel the plaintiff and his sect are distinctly pointed at, and the inuendo applies to him as well as to his sectaries. The closing part of the article distinctly points to the plaintiff and other Maharajas:— "Then do you personally adopt a virtuous course of conduct, and admonish your other Maharajas." It was said the other day that this was the only inuendo that was correct; and now, to-day, it is argued that it does not apply to plaintiff! The witness Jumnadass stated he took the later part of the libel to refer to Judunathjee only, and that there was no other person of that name. This witness was not contradicted nor cross-examined upon the point; and Mr. Bayley had every right to suppose it was taken for granted by the defendant's counsel. The Court, Mr. Bayley belived, had no doubt whatever that in this inuendo the plaintiff was referred to. The only witness who knew English, Vurjeevundass Madhowdas, said the plaintiff was a high priest and was respected by the Brahmins. The learned counsel might, therefore, take it as admitted that the plaintiff is a Maharaj at all events. There were very few inuendoes in this plaint and the first occurred in the very first line of the libel— "In the Purans and other Shastras of the Hindus." Was it necessary, Mr. Bayley asked, to set out everything, even the facts settled and admitted? An inuendo cannot be used without previous averment; and the subsequent allusion to the Purans and Shastras, being preceded by the very same words in the introductory averment (where they are taken as admitted,) it was not at all necessary to explain it a second time. The learned counsel would repeat that the introductory averments were

immaterial and could not be traversed, and that there was not a single inuendo which was not more than explained in the averment. After referring again to the judgment of Sir M. R. Sausse in the Demurrer case, Mr. Bayley said, the plaintiff had given proof by the evidence of his followers and others who have been on pilgrimages to different cities of India, that the Maharajas are respected in Bombay and elsewhere by the Bhattas, Lohanas, and Banias as their high priests. The second plea is that the plaintiff is not a preceptor of religion, while it had been sworn that he and other Maharajas are the preceptors of religion. There was satisfactory evidence on both these issues ; and the simple question now was—Is there evidence to send the case to a jury ? The first four pleas, Mr. Bayley went on to say, as to which the burden of proof lay upon the plaintiff, were all proved. The learned counsel was quite ready to proceed to a consideration of the authorities cited and the arguments addressed to the Court upon the other pleas, but the question was now extremely narrowed, and it only remained for the learned Judges to say ,if there was a sufficient evidence to submit the case to jury as a libel.

M. Bayley.—If it is no libel in your Lordship's opinion, I shan't proceed.

Sir Joseph Arnould.—As far I am concerned, I should like to hear yout further observations.

Mr. Bayley now proceeded to a consideration of the authorities cited by the learned counsel on the order side. (Reads Addison on Slander, under the head Wrongs.) The learned counsel said the libel had been dissected word by word; but this was not the right way of juding of it: it must be taken in its entirety, and then the reader is to say

what is the impression produced upon his mind by a perusal of the whole article. In ninety-nine out of every hundred cases of murder, the decision is arrived at by circumstantial evidence, when the minutest parts are gathered up and meet in a whole, and it is then that the offence is established. Now as to the article in this suit, the first portion was a historical summary, which is introduced by way of prelude to the charges. It shortly ceases to be historical, and comes to the doctrines of the sect, where it is gradually becoming offensive! "Do personally adopt a virtuous course of conduct," implying that plaintiff is following any thing but a virtuous course.

Sir Joseph Arnould.—There is no inuendo that he is not.

Mr. Bayley.—After the argument and explanations snbmitted to the Court, are your Lordships prepared to say it is not a libel? When the plaintiff is signed but, and told to adopt a virtuous course of life and to export the other Maharajas who are said to be immersed in a sea of licentiousness;—when these circumstances are taken in connection with the general aspersions and imputations upon the whole sect of the Vallabhacharyas; and then winding up with the personal attack upon the plaintiff, I very much doubt if your Lordships will say it is not a libel. "You Maharajas defile the wives and daughters of your devotees;" Is not this libellous?

Sir Joseph Arnould thought that the words of Goculnathjee's Commentary were necessary in considering the doctrines of a sacred book.

Mr. Bayley said there was no proof that such a person existed, or ever wrote the Commentary! The question was what impression the article

would produce upon the minds of Hindu readers, and not the mind of a European.

Sir Joseph Arnould.—We are not to import European notions into the consideration of a question of this kind. But how are we to arrive at "libel or no libel,"—that's the difficulty which at present presses upon my mind.

Mr. Bayley.—The way is to consider ourselves out of Court, and then judge what impression must have been produced upon the minds of the readers of the original article in 1860.

Mr. Bayley said he had not finished, and the Court therefore rose at a quarter-past 5 P. M.

Sir M. R. Sausse.—Since yesterday Brother Arnould has looked into the pleadings, and is of opinion that there is a case to go to a jury as to libel or no libel. I have already expressed my opinion that the first part of the article is historical but it is a very different matter indeed when we come to the latter part alluding to Judunathjee personally.

Mr. Bayley therefore proceeded with his reply to the application for a nonsuit, and concluded at half-past 2 P. M. Mr. Scoble followed on the same side and finished his address at a quarter before 4 P. M. Mr. Anstey then made his reply till 6 P. M. when the Court closed.

Fifth Day, Friday, 31st January, 1862.

REPLY CONTINUED.

Mr. Bayley resumed his reply this morning; he said that much stress had been placed by the learned counsel for the defence on the question of libel or no libel, and the case of Hern *vs.* Stowel had been constantly referred to. The Court there

held that it was not actionable; inasmuch as it was not a libel upon the plaintiff in his individual character. In this case it is said that this is not a libel upon the plaintiff in his individual character but in that of Maharaj and Brahmin. (The learned counsel here cited several cases.) The Court was bound to regard the plea of justification, and even if the Court thought that this was not a libel, it could not from the averments come to any other conclusion, even if the whole of the other arguments were disposed of, this was clearly a libel upon the plaintiff in his character. The defendant charges the plaintiff with defiling the wives and daughters of his followers. (Here the learned counsel commented at great length on the authorities cited by Mr. Anstey, and remarked.) On looking at the libel which we must now prove by evidence, your Lordships will see that the commentary stands in bold relief—it has not been stated that Goculnathjee made it, or that he worte it. It may be quite consistent that the commentary was not written. We must not look at the libel itself, but at the plaint. Amongst the introductory averments are those relating to the plaintiff, and he would call the attention of the Court to the translation of the article and to the other pleadings. The libel is upon him in his double capacity as man and as Maharaj. The case of *Hern* vs. *Stowell* does not apply—the case of *Robert* vs. *Stowell* (4th Bingham) to which he alluded shows that the action of libel can be maintained; the plaintiff could abandon one of the capacities, and sue upon the other. It is stated that the alleged inuendoes are not proved with reference to what the Shastras are, and what the Kali Yug is: he would say that it was not necessary: also that the Court has not been invited to look into the Pooranas. The Court has been told that

this sect is not 400 years old : this he would submit had nothing to do with the libel Protestantism is not so old : and the doctrine of the Immaculate Conception in which the Roman Catholics believed is of a very recent date. It is also alleged that the plaintiff must show special damage, This is not necessary (here the learned counsel cited cases to bear out his view.) The next allegation is, the letters were written as a privileged communication; that he not damnified in his sacerdotal character; he had said that the plaintiff is injured in his private character, and this was quite sufficient to constitute a libel. If your Lordships are of opinion that it is a libel, then malice is implied. It is stated that it was a reflaction upon the class and not upon the plaintiff. Great deal of argument has been brought forward to show that the plaintiff is not signled out personally: but what would the learned counsel for the defence say to the passage. "Do you personally practise a virtuous life and admonish &c." It has also been attempted to be shown that the Maharajas were not the preceptors of religion—the Court has had no evidence to show that they were not, whereas one of the witnesses distinctly told the Court that they did instruct the sect: the Court has had no evidence to show that there were any other preceptors. If the Court was, however, not of this opinion, he would submit that there was an issue, and a case to go to a jury. It has also beed contended that there is a variance between the translation and the oral evidence of Mr. Flynn: this was immaterial: he would submit that in the Gujarati character the libel stands. The Court has full power under the rules to correct any translation, and he trusted that language so ambiguous would not prevent the Court from

letting the case proceed. The next is, this is a privileged communication, (Mr. Bayley here read from *Starkie* on Slander and cited cases.) He said that not a case had been cited by the learned counsel on the part of the defence to show that every publication in a newspaper is a privileged communication. Justifiable occasion would give a writing character of a privileged communication: as in the instance of a master giving a certificate to his servant. He contended that the privileges applied to certain cases only, and that any abuse of a people, of a class, or of any member of a class would not prevent the party abused from being entitled to protection. Your Lordships could not, Mr. Bayley said, think for a moment that this is a privileged communication, but if your Lordships are of opinion that it is, then he would submit that there was malice in the publication to rebut the evidence. He would submit for the reasons stated, that the application for nonsuit must fail; a *prima facie* had been made out and that the case should go to a jury.

Mr. Scoble said that he appeared with his learned friend, Mr. Bayley, for the plaintiff. He would endeavour to make his observations as brief as possible, regretting that he would have to do so. First then, he would remark that the ground upon which the application for a nonsuit has been made is not one which can be determined by the Court: his learned friend asks the Court to nonsuit the plaintiff, totally disregarding the plea of justification. He would venture to say that this was an unprecedented application. Had their Lordships been sitting as jurors, he should have asked them to take into their consideration two of the eight pleas, but his learned friend had unfairly taken advantage of the double

position. The seventh and eighth pleas are pleas of justification, and his learned friend cannot now be allowed after having put the pleas on record to ask the Court to leave them out of all consideration. (Referred to text books, and said it was clearly supported by *Chitty*.) Nearly all the evidence taken is not the evidence of the plaintiff. The major time has been taken up in cross-examination. The plaintiff's case had been framed on the pleas drawn up by the defendants, and he would say it was not proper that he should be now turned round upon. Much had been said on the introductory averments, as to the plaintiff being Maharaj. (He referred to the case of *Jones* vs. *Stephen*, an action in a case for libel in which rules for pleading in an action of slander are laid down.) If the defendant wanted, Mr. Scoble went on to say, to reply on the defence now raised, proving the general issue, he ought to have struck on the two pleas of justification. Mr. Scoble referred to one or two cases on privileged communication, and said that those cases establish that communication published in a newspaper must be proved to be true. The case had been put forward unfairly. The defendant is represented as a Reformer, a Martin Luther of the Banian caste. This he would say was not a religious question at all; the question is, has the plaintiff been libelled? Here we have a man, who up to the publication of the libel, was held in respect and esteem, and has borne an unblemished character up to the time of bringing this action. He has brought an action on the Plea side of this Court, he might have done it on the Crown side, but his object is to show to the world that he has given the defendant an apportunity of proving the statements made by him, reflecting on his (the plaintiff's) character. His

learned friend, Mr. Anstey, had said no evidence was brought forward to show what the Shastras and the Kali Yug are, he would say that their Lordships were supposed to know the religious laws and customs of the natives, and that by the charter their Lordships were bound to make such rules as would not interfere with the customs, religion, laws, and usages of the natives: and he had a right to assume that their Lordships knew something of the facts and religion of the natives; he should say that it was unnecessary for the plaintiff to call experts to show what the religion of the Shastras is. Here Mr. Scoble went on to say, we have a clergyman of the sect of Vallabhacharyas, a sect in existence since 400 years ago. The defendant is a person who dissents. The Maharaj is in the position of a clergyman of the established church of England or of the Romish church; in fact more, he is a *gooroo* or spiritual guide of the Hindu religion, which the Court is bound to regard according to the charter. Public life is subject to criticism, but when one comes to a private home and draws up the curtain and exposes private life, so that it is detrimental and injurious to interests, surely, he would say, there could not be any thing to make the act a justifiable one. Here their Lordships are told, the Maharaj is a public man, and that he under the guise of religion defiles the tender wives and daughters of followers: he could say that public comment on any characters cannot justify it, unless it can be proved to be true. In the case of *Levy* vs.——— (4th Bingham) the plaintiff was charged with publishing a facetious poem of eight verses, whereby the defendant was held up to scorn and ridicule. The bailiff (defendant) was called a bum, no doubt it was amusing; but C. J. Best, who decided the case, was of opinion that it was a libel, inasmuch

as the publication was hurtful to the feelings and calculated to make him appear mean in the eyes of the people. There is no doubt, Mr. Scoble contended, that the plaintiff is charged with a high and grave offence in the Hindu religion: if that offence is allowed to be imputed to him it must make him little in the eyes of the European community; then the damage appears on the face of the record and is a libel. Now as to the question of malice as to the presumption of malice, he would refer their Lordships to the case of *Simpson* vs. *Wallace*, 12 Q. B. How would contend that there was no occasion to justify the libel: it was not within the range of a privileged communication. As the case stands the plaintiff bears an unblemished character, and is held in respect by the Hindus: and as to the point raised by his learned friend, Mr. Anstey, that the libel was incomprehensible, he would maintain that it was not so. The Court had before it only one version—the translation by Mr. Flynn, the chief official translator: for aught he knew another translation may be in his learned friend's pocket. Two points had resulted strongly from Mr. Flynn's examination. The word "defile" was not in the past tense—the sentence was not in two parts but one, and there was no full stop. A great deal had also been said that the word "Maharaj" in that sentence was in the vocative case: and that since his learned friend had been allowed to make a suggestion he would make one also. No grammar would justify the word Maharaj being used in the vocative case. It was nothing more than an apostrophe. He would with these remarks submit that the application of his learned friend be refused, and the defendant called upon to answer.

Mr. Anstey rose and commented at great length on the cases cited by Mr. Bayley and

Scoble; he said that the case of *Roberts* vs. *McDougall* referred to by Mr. Bayley was no authority for the plaintiff; he produced other cases and read passages from the *Weekly Reporter* and text-books, and submitted that there was no case made out to go to a jury, that their Lordships were not then to consider whether there was a libel or no libel, but as to whether the plaintiff had made out such a case as should go to a jury. Averments the Court had, but proof it had none. The learned counsel commented on the different points of Mr. Bayley's arguments; he laid before their Lordships the law on the question of libel, and privileged communication, and said that it would spare their Lordships much time and trouble and the parties expense, if instead of entering upon the defence which must occupy at least twelve weeks (!), they would declare that the defendants were entitled to a nonsuit.

The Court rose at 6 o'clock and said that the decision would be delivered the next day.

Sixth Day Saturday, 1st February, 1862.

The Chief Justice this day pronounced the Court's decision on the application for a nonsuit, which was refused, and the defence was ordered to be proceeded with. The power of the Court to entertain the motion, said his Lordship, has been contested, but the Court was of opinion that it had that power. It would be an unseemly thing to stop the proceedings however, except in the presence of a very clear case for it. It appeared that this application was made upon a two-fold ground, viz, that the plaintiff has used in a particular character, and the character must be proved; and it was argued that as he has

failed to prove the character, the case must fall; and that even if the proof of character were sustained. and the Court came to that opinion, yet that the publication was not libellous. His Lordship was of opinion that the averments in the plaint, which were not traversed, must be taken to be admitted. Having looked at the evidence adduced for the plaintiff, the Court thought there was some evidence of a libel. The case of *May* vs. *Brown* and *Lewis* vs. *Walter* are not expressly overruled, and the Court would act upon them as good law, while, according to the principles of these cases, the plaintiff had established the characters in which he alleged he was libelled. Then came the legal question, there is a case to send to a jury on the question of a libel. His Lordship considered, after the very able and erudite discussion of counsel on either side, that, as to the libel, there was a *prima facie* case disclosed on the face of the publication: and it was his opinion that the tendency of the latter part of the article is to bring the plaintiff into hatred, and to injure his character. That being the opinion of the Court, it remained. With the defendants to proceed with the case, and to discharge themselves, by proving the libel to de justifiable, or by disproving any of the allegations which were traversed by their pleadings. His Lordship thought the mere cross-examination of the plaintiff's witness made out nothing to show that the libel was entirely justifiable. It was said the evidence for the defendant was very considerable, and possibly it was very lengthy, but every endeavour, said his Lordship, will, he was sure, be made on all occasions to economize public time. Having expressed his opinion that the gist of the libel consisted in the personal charge against the plaintiff, his Lordship would hope that the evidence which

might be brought forward would have its bearing upon that particular issue, whether as to the fact of a justifiable occasion or as to a justification of the libel itself. The Court thought that the strictures on Goculnathji's commentary in the earlier part of the libel, although they contained strong expressions, did not appear to go beyond the range of legitimate criticism.

Sir Joseph Arnould entirely concurred in the views of the learned Chief Justice. He would confine his remarks only to two points,—whether the oft-cited case of *Horne* vs. *Stowell* conflicted with *May* vs. *Brown* that is, whether the libel must be shown to have affected the plaintiff in both characters. His Lordship considered that the decisions in those cases did not conflict with each other in any respect. With regard to the other important question, whether it was a justifiable occasion for the publication of the libel, his Lordship said he threw out observations during the hearing to guard against any thing being surmised against the free, open, and unreserved discussion of public questions by a public writer. An article is not libellous because it is free, open, and bold in the exposure of measures and men, nor because it transcends the bounds of polite journalism. The strictures on the commentary of Goculnathji, it appeared to his Lordship, were not libellous, because the defendant in his capacity of a public writer, gives vent to a strong, honest, and virtuous indignation against the upholders of what he considers to be the atrocious doctrines of the commentary. All this was no libel, but honest, bold, and justifiable comments. But then comes the question,—is he justified in singling out the plaintiff and attacking his personal character? As very properly observed in the able address of Mr. Scoble, the obvious tendency of the expressions

used must be kept in view, in deciding a question like this. The enquiry naturally occurs to the minds, what must have been the impression produced by a perusal of the article upon the minds, not of a certain class, but of readers who are by no means remarkable for acumen or judgment ?— "You Maharajas ! acting up to that commentary, defile the wives and daughters of your devotees." Here is that which constitutes the libel; and the question arises, Did or did not the defendant intend to say that the plaintiff, and other Maharajas, defile the wives and daughters of their devotees. To his Lordship there appeared to be some proof necessary of a justifiable occasion for this direct personal imputation upon the plaintiff. Sir Joseph concurred with Chief Justice in thinking, that the justification ought to be addressed to this point only, and it would be a waste of public time to justify any remarks which preceded those just referred to.

Mr. Anstey here asked that leave may be reserved to the defendant to show cause against the decision on the application for a nonsuit.

After some discussion, the Court reserved liberty to the defendant to move, after verdict, to enter a judgment on the nonsuit, but no fresh arguments were to be addressed to the Court by the defendant in that respect, unless called upon to do so by the Court.

SPEECH FOR THE DEFENCE.

Mr. Anstey, on the sitting of the Court after tiffin, commenced a very able speech for the defence. It became now his duty (said the learned counsel) to address to the Court such observations upon the facts of the case as might prepare their Lordships for the evidence which would be ad-

duced on behalf of the defendants. If for the purpose of proof the inuendo, whereby the alleged libel has been interpreted into a direct attack upon the plaintiff, had failed; or if it could be proved that it was nothing more than the bare enunciation of true criticisms on the doctrines of the commentary; or if it could be shown to have been used merely for the purpose of giving support to the view taken by defendant of the commentary, then Mr. Anstey hoped that any one of these circumstances would exonerate, in the opinion of the Court, the defendants of all misconduct, more especially with regard to the concluding words of the paragraph. The history of this case is a history of the justifying occasion on which the defendant relies. It is proved that the defendant is a member of the Bania caste; that the caste as a body is divided as nearly as possible between the worshippers of the Maharaj and the worshippers of Shiva; and that the latter are naturally antagonistic to the former. That in addition to the Bania caste, another caste called the Bhattias, the most ignorant and the most inveterate in superstition, are to a man worshippers of the Maharaj, and believe in him as the incarnation of the deity, sent on a mission of impurity from the other world. Some of them believe that, in virtue of his divine authority, his power over the doctrines and all subjects pertaining to religion, is omnipotent; in short, to use the language of one of the plaintiff's witnesses, the people's credence in a doctrine, however atrocious, depends upon its being contained in a sacred book. It then overrules the authority of all previous cases, and the Bhattias believe in it with a blind zeal. The Bhattia is the only community in which the Maharaj can boast of commanding an unanimous following. In any other caste, the number of his devotees is com-

paratively very much smaller. And yet he is forsooth addressed by all as the "Maha Prabhu" (great God) or "Maharaj," great king, is worshipped with divine honours, is swung in the swing in the same manner as the sacred idol, is bathed with saffron water as the image is, and is honoured with prostrations as the image is honoured! Less indifferent to public opinion than the Bhattias are, the Banias are less blind in their zeal. To these are to be added a wretchedly small sect of Marwaris, a few Bhansalees, and a handful of outcaste Brahmins, to make up the catalogue of the Maharajas' worshippers.

This is the sort of evidence, Mr. Anstey said, offered in support of the plaintiff's case. In a country swarming with a numerous population, some two hundred millions of persons professing the ancient religion of the land, the Maharajas, the Court is seriously asked to believe, are the preceptors of the ancient Hindu religion and the spiritual guides of the people! Mr. Anstey laid some stress on this point, because, even if the question of damage sustained by plaintiff from the publication of the libel be taken into consideration, he would most strongly urge that the prefatory averments are not proved. Neither the presence of malice nor any inuendo whatsoever, can compensate for the want of proof of those averments. The learned counsel here cited several cases to show that this has been ruled over and over again. Even if the plaintiff were damaged by the libel, there is no evidence of it, while there is no averment of a special or ordinary damage. The witnesses for the defence will tell the Court that plaintiff is in no way damaged by the supposed libel, that he is not a Brahmin, that he is an outcaste, that his ancestors were outcasted by the Telinga Brahmins for heresy and schism, and that he is execrated generally in

his character of a Maharaj. It will be in evidence that these Maharajs cannot intermarry out of their body without procuring the excommunication of the wife and her family; and as the outcasted of the Telinga Brahmins, they cannot get a wife without making large promises of money, proportionate to the loss of caste and other advantages incurred by some indigent family. Long before the libel was written, the plaintiff had but a bad reputation among his own people; and the circumstances under which he suffered in that reputation, will be brought to the notice of the Court. Previously, also, to the period of the pnblication, he refused to give instruction except to those who went in search of it to his house. As to the female devotees, they were enticed to his rooms under the pretence of religious instruction; and the opportunities thus afforded him were misused for the purpose of seduction and adultery.

The evidence will show that, at this juncture, the plaintiff became acquainted with defendant, himself a Vallabhacharya, and that the acquaintance was kept up for some time. The secretary of the Maharaj communicated with defendant on the subject of reform, and other subjects in which the plaintiff pretended to take an interest, though his professions were miserably belied by his subsequent conduct. The plaintiff made an outward show of taking great interest in the promotion of female education and in the reformation of religion; often expressed a sanctimonious horror at the adulterous practices of his brother Maharajas, and said that he was aware of their adulteries, but that the crime was so widely prevalent that it could not be prevented. Their seducers were the "Varkats," the hereditary procurers of women for the Maharajas. It would be shown, said the

learned counsel, that as far as the immoral practices of the Maharajas are concerned, the plaintiff was the first to deplore their condition. It would be shown that, in connection with this libel, a meeting of the Maharaj's followers was held under the superintendence of his agents and secretaries to effect a "bundobust;" and that those who put their signatures thereto, agreed to do one of the two things, either not to appear in the Court as witnesses, or to swear falsely that the Maharaj never committed adultery. And although the Maharaj's agent, who was also conducting this case, should deny the making of any such "bundobust" as that imputed by a witness for the plaintiff who swore that it was the same as had been enquired into in the case of the *Queen* vs. *Goculdas Liladhur*, the learned counsel would prefer to believe the other. He would show what that bundobust was, and that it had been punished as an attempt to defeat the administration of justice in Her Majesty's Supreme Court. The veil of hypocrisy under which plaintiff affected to feel a great interest in female education and the re-marriage of Hindu widows, was rather prematurely torn asunder. A more zealous, but less discreet friend of the defendant invited the Maharaj, through the columns of a newspaper, to come forward as the advocate of these very desirable innovations. The defendant thought that the Maharaj would not so soon declare himself in his true colors; but he (plaintiff) instantly renounced his doctrines concerning the subjects in question, and repudiated the opinions imputed to him. He at once quarrelled with the defendant and threw out in print reflections of a provocatory character against him. The learned counsel alluded to these circumstances to show the position in which the parties stood at the time. This was in the month of July 1860. Plaintiff threw

out those provocatory reflections in a paper over which he has direct or indirect influence. (The learned counsel here cited *Watts* vs. *Fraser,* and other cases in respect to reflections of a provocatory character.) It would be shown that the plaintiff went further ; and in a pamphlet, a serial book in fact, publicly challenged the defendant to a controversy on the subject of religion, and also ridiculed the defendant's views and opinions therein. A letter signed by plaintiff's secretary, and purporting to be written under the plaintiff's authority, was inserted in the *Chabook* newspaper of the 29th September 1860, whereby, also, defendant was invited to the controversy. It would be shown, the learned counsel went on to observe, that the plaintiff communicated with defendant's paper through his secretary, and with other papers through other secretaries and agents. Mr. Anstey here adverted to a handbill, published and circulated by plaintiff on his arrival from Surat, in which he complained of the Vaishnavas not visiting him as they ought to have done. It would be shown that about the end of August 1860, the plaintiff convened a public meeting to discuss the subject of widow re-marriage with a Gujaratee poet of the name of Narmadashunker. This was after the challenge published by the indiscreet champion of re-marriage. The defendant agitated the subject, and the plaintiff joined in the discussion, but was unable to answer his arguments or resist the logical conclusions to which they led. Baffled thus in a controversy in which he voluntarily took a share, and apparently chagrined by his bad success in the matter, plaintiff started a pamphlet called the "Propagator of our own Religion," alluded to in the libel, and with the view of securing subscribers, issued hand-bills to be distributed among the Vaishnavas. At the end of the first

month after the periodical was started, a lecture by the plaintiff was published therein, and a distinct allusion is made to the defendant in the same:—"Whoever may wish to write upon this lecture should do so (a direct challenge to defendant) by quoting the Shastras, but he who would not do so, should be unworthy of belief by his own people." Here, therefore, Mr. Anstey remarked, the defendant is denounced in the very first number of plaintiff's periodical, as being unworthy of belief by his own people, his castemen. Accepting this direct challenge, and from a consciousness of his responsibilities, the defendant reviewed in his paper the lecture in question. Upon this the plaintiff resorted to aggressive measures, prohibited the Vaishnavas from subscribing to defendant's newspaper, and gave expression to his cordial wish that the defendant should be punished by excommunication from his caste for writing those reviews of the lecture. The article containing the alleged libel, Mr. Anstey therefore maintained, was written in answer to the challenge to which the learned counsel had alluded before. The defendant wrote another article in vindication of himself, and in reply to the charges levelled against him by plaintiff. The controversy was continued for sometime afterwards. Amongst others the plaintiff published articles distinctly referring to the defendant as the editor of the *Satya Prakash*, and accusing him of assigning false meaning to the doctrines of the Maharajas. One of these articles says:—"The (defendant) walks on the support of *opium*, and will fall to the ground, and will never be able to get up. He is the firefly, while we (plaintiff) are the Sun." The controversy was a *bona fide* one on the defendant's part, long before and after the libel. It is not, however until six months after the publication of it, that

the plaintiff thinks of commencing the action for reasons best known to himself. But why this long delay? Subsequently to the publication of the alleged libel, and in the second number of his pamphlet, the plaintiff made another attack upon the defendant, accusing him of falsehood for having stated that the books of the Vallabhacharya sect were kept concealed in the temples, lest the Brahmins should read and repudiate their doctrines. The plaintiff in one place describes the Brahmins as persons of another religion, and "not worshippers of the Supreme Being." He again attacks the defendant shortly afterwards and applies to him (the defendant) the very words of the libel:— "What hypocrisy! Oh, you Vaishnavas, you see whose is the rascality and whose the hypocrisy!" So unconscious was the defendant of any impropriety or offence against the plaintiff that, in the month of November 1860, after the publication of the alleged libel, he wrote in his paper a calm survey of the public career of Jadunathji Maharaj, this unworthy champion of monstrous doctrines, on his departure for Surat. In this survey of plaintiff's career, defendant writes to the following effect in his issue of the 18th November 1861:

"We have thus made a note of the career of Jadunathji Maharaj during his short stay in Bombay. In concluding this note we beg permission to give our impartial opinion about Shri Jadunathji Maharaj. The praises of this Maharaj formerly published in the *Satya Prakash* paper are not lessened by the subsequent controversy. Of all the Maharajas who are known to us, Shri Jadunathji Maharaj has been found to be the most courageous and the most discriminating. Without regard to the unjust means the said Maharaj has latterly adopted to injure us, we must

say that by a public approval of female education the Maharaj has rendered himself worthy of no little respect. Had not the poet Narmadashankar erred, and had he not plunged him into the re-marriage controversy, we should this day have seen the Maharaj advancing instead of retiring from the field of reform. But often times some slight incidents prove unfavorable. The same is the case now, and we are really sorry for it. * * *

"O religious preceptors! You are not our enemies. You have not in any way injured us. We entertain no malice against you. We wish that you may receive all due respect as religious preceptors. And we have not had any business or dealings with you. Then, O religious preceptors, why should we entertain any malice against you and annoy you without cause? If, in telling you the truth, any hard words have ever been used, do you forgive us. Remember that those who become flatterers and do not endeavour to lead you from a crooked path, are your enemies in the shape of friends. And those are your true friends who warn you that if you do not leave the crooked path your persuasion and dignity will be prejudiced. O! We heartily wish that you would quit the evil path and come up on the good path that we may never be under the necessity of writing anything acrimonious."

Jadunathji, then addressed the ignorant Vaishnavas as follows: "The editor of the *Satya Prakash* defiles our religion;—are you not going to punish him?" The defendant most emphatically denied that charge in his paper.

On the 18th November 1860, so far as the defendant was concerned, the controversy with the plaintiff was abandoned. The action was commenced in May 1861, and the notice which called

upon the defendant to retract his statements in his very next issue, was written in the last week of April. That was indeed a very long interval after the publication of the libel, and this was but a very short notice to consider and retract. The defendant accordingly, in the next issue of his journal, said he saw nothing to alter or retract in what he had written, and nothing to apologize for, as required by the plaintiff. Now, whatever may have dictated the spirit of the libel, it was evident in the opinion of the learned counsel, that the plaintiff, in filing the action, acted so from a desire to injure the defendant, against whom he cherished ill-will, and by no means from a sense of public justice, for the extracts cited above had shown the absence of malice on the part of the defendant. A strange circumstance it appeared to be that the plaintiff should have taken full six months to deliberate on the tendency of the article. By the statute of limitations, according to the new Indian Act, a period of one year only is allowed for instituting libel actions, whereas the plaintiff allowed half the time to elapse in coming to an opinion whether it was a libel or no libel. Coupled with the above was the singular fact that even after the libel, the plaintiff prosecuted and continued the controversy with the defendant!! It was a precious long time, certainly, for the plaintiff to find out the grievances he had suffered! The real solution of the problem lay in the fact, that the Vaishnavs showed themselves determined not to be subject to the plaintiff or any other Maharaj in matters of education; and the plaintiff sought to revenge himself upon the defendant for this beneficial change in public opinion.

The circumstances to which he had alluded at such length, would, the learned counsel trusted,

throw some light on the history of the case. Now, as the action was commenced, it became necessary for the defendant to protect himself by such means as he might be advised to adopt, and he was aware that the libel could be justified in every particular. The new enquiries which he instituted, further satisfied him of the correctness of his views; and learned men, who knew nothing of the history of the case, would tell their Lordships that the passage alleged to contain the libel, though it was obscure, was capable of the meaning which the defendant gave it. It bears only a hyphothetical meaning, and is but the enunciation of doctrines given to the world by the plaintiff's ancestors. It is this, "If you will act according to your precept, the precept of your ancestors, why then must you defile the wives and daughters of your devotees!" And what is the character of their "*sacred books*" so reverenced by Mr. Bayley? Why, they contain nothing but the most obscene and beastly adventures If the Maharajas are to pursue amorous sport, putting their arms round the necks of their female devotees; if such are the doctrines of their sacred books! the defendant is justified in calling upon the plaintiff, who had set himself up as a monitor and a propagator of his religion, to begin by desisting from such practices and so to admonish the other Maharajas. They claim to be considered, as Krishna was considered in former days, each the husband of many women and the "ocean of Ras Lila." It has been (for the plaintiff) shown that they received the public in one room, at 3 or 4 o'clock in the morning, where the darkness of the hour favoured the designs of some evil-minded men; and that a portion of the public which consists of women of certain attractions, are received into another room, towards which the Maharaj first

bends his steps and is followed into it by the women. It would be shown by evidence such as any of the Ecclesiastical Courts at home would deem sufficient, that adultery is committed in that room. It would be shown that the plaintiff had been bred and brought up in the adulterous doctrines of the sect, and that he at one time maintained that adulterine intercourse with the devotees of the Maharajas leads to the strengthening and development of the body, and is akin to the physical education of athletes. And this is the leader of high caste Brahmins, the incarnation of God on earth, the gentleman, in short, as one of the learned counsel called him; and these are the professions and practices of a man who says he has sustained damage by the libel! (The learned counsel then made some remarks upon the absence of the Maharaj from the Court, though he had been served with a summons, and upon the fact that not a single Bhattia witness had been called for the plaintiff's case.) It would be shown, Mr. Anstey went on to say, that the language made use of by the defendant is not at all excessive, and that it is only expressive of an honest indignation against the doctrines of *sacred* books, which are full of blasphemies and tales of adulterous practices, and in which adultery itself is held up as commendable. (Alludes to the story mentioned by one of plaintiff's witnesses, according to which the husband anointed and dressed his wife, and upon his shoulders carried her to the house of the intended adulterer.) The Court would learn from the mouths of the witnesses that the doctrines of the sacred books enforce the culture of adulterine love and sensual lust towards the leaders (the Maharajas,) and it is said that these are the only means of "the deliverance of the soul and its re-absorption into

the Divine essence,"—as if God meant Jadoonathjee Maharaj (suffering under a loathsome disease) to propitiate Him, by engaging in hot love with his devotees! But, say these preceptors of religion, "This principle which we teach is not a barren principle: it must bear fruit. To each of us, (himself a Krishna,) you will offer your body, your soul, your wives, your sons, your daughters, your 'tun mun, aad dhun'—(your body, mind and property). If you wish to serve God, and we are God to you, do it in this three-fold manner." The sense of this application of body in reference to woman, the learned counsel would leave to the Court to infer. A true Vaishnaw is enjoined to feel no shame and no regard to public opinion; and that is service with the "mun," mind "dhun" property of every kind. And say the Maharajas, "Before you enjoy any portion of your 'dhun,' you must offer it, him, or her to your God, personified in us; you have no right to enjoy it before us." These practices were commonly known and commonly spoken of in the sect, but until the time of Goculnathjee, no Maharaj had the audacity to illustrate the three grand principles. "That doctrine," says defendant to the plaintiff, "I call upon you to denounce; and I call upon you especially, Jadoonathjee Maharaj, because the others are sinking deeper and deeper still, while you alone of their number once came forward to propagate your religion! and if your words are not so many impostures, do you admonish your other Maharajas, do you scorn the writer of the commentary (repudiate the doctrines of it, according to one translation,) and such of you as defile the wives and daughters of your devotees, according to the doctrines of that commentary, desist from that, if you wish to propagate your own religious faith, and to be heard."

The defendant is thus addressing himself to those who have set themselves up as teachers; and says to them, "unless you do so and so, you cannot expect to be heard." If the Court, Mr. Anstey remarked, had once any doubt as to the meaning of that passage in the libel, it must now vanish.

As to the nature of the evidence, Mr. Anstey remarked that the plaintiff's secretary, ever since the Bhattia Conspiracy Case, had been trying to dissuade defendants' witnesses from appearing in Court, threatening them with excommunication. The difficulties of obtaining evidence in cases like this are great everywhere, but here they were magnified by the Maharaj's attempt to withdraw from the ken of the Supreme Court all of his sect who are likely to give evidence in behalf of the defendants. For these reasons, Mr. Anstey said, the defendants were entitled to the utmost indulgence which the Law of England, as administered by their Lordships, would allow. There was evidence that the Maharaj's tyranny was not only spiritual, but was also temporal, worked by spiritual means. And such it was that a Justice of the Peace—Mr. Anstey regretted to say, the man was still a Justice of the Peace—admitted having subscribed his name to the "slavery bond," a document whereby he bound himself to excommunicate all persons in his caste who should write against these doctrines or attempt to procure the Maharaj's presence in the Supreme Court. The signatures to that document were not fully obtained until an interdict was issued and the temples were closed, and the devotees were denied for some days the beatific vision of the image! Allusion was next made to the visits of the Maharajas of the sick beds of dying persons, and their putting (for fees received) their holy feet on the breasts of

those apparently in the last throes of their agony and struggle with death. When all the evidence was given, the Court would, Mr. Anstey had no doubt, be of opinion that the plea of justification as to the language was fully sustained. He hoped their Lordships had been now enabled to understand much that was at first unintelligible. There was no evidence of any loss to entitle the plaintiff to damages; on the contrary, it was stated that he was respected as much as ever before, though not so much *loved*: and no doubt there were averments in the plea to make intelligible that sectarian distinction.

Seventh day, Tuesday, 4th February 1862.

(1.)—*Karsandass Mooljee, examined by Mr. Anstey.*—"I am one of the defendants in this case, and a Bania, about 28 years of age. I was born in the Vallabhacharya sect. I am one of those who believe in the Maharaj as a *guru*; I never believed him to be a God. I was the Editor of the *Satya Prakash* at the time the libel appeared: the paper is since amalgamated with the *Rast Goftar*, and is now known as the *Rast Goftar and Satya Prakash*. The other defendant was merely the printer. I edited the "Stri Bodh" (a magazine for the instruction of females.) I have also written several pamphlets and books. *I am somewhat familiar with the doctrine of the ancients Hindu religion.* It is broken up into about a hundred sects, in some respects differing widely from each other. I am familiar with the *distinction between the worshippers of Vishnu and those of Shiva*: those distinctions are strongly marked. The Vallabhacharya sect are the followers of Vishnu. Both differ in morality, the *creed of the Vallabhacharya does not inculcate self-denial*; I think that of Shiva does. The ancient religion is one of self-denial, mortification,

and penance. The Vallabhacharya religion commenced about 375 years ago. Vallabh was the founder of the creed, and a Telinga Brahmin. Luxmon Bhutt, the father of Vallabh, and Vallabh himself, were excommunicated by the Telinga Brahmins, for founding a new sect. According to the doctrines of the sect, as mentioned in the "Nij Varta" (written in the "Brij Bhasha" language,) Vallabh, on his death, ascended to heaven in a mass of flames. The Maharajas marry among themselves: those, out of their body, who intermarry with them are outcasted. They intermarry by holding out large promises of money and other rewards. Those who intermarry with the Maharajas are poor Telinga Brahmins. *In one instance of such marriage which came under my notice, I think the Telinga Brahmin was poor.* I am prepared to state that the Maharajas are not Brahmins of high caste, and that the creed of Vallabh is of a modern date. They are not the preceptors of the ancient Hindu religion to any body. As a general rule, the Vaishnavs receive religious instruction in their own peculiar doctrines from the Maharajas. In respect to other opinions they receive instruction from the Brahmins. The learned Brahmins openly teach the doctrines of the ancient religion. The Maharajas conceal their doctrines: there is a prohibition against revealing them. [A good deal of discussion took place here as to the unfitness of the witness to speak with authority on matters of which he could have no personal knowledge. Mr. Bayley objected that the witness's statements, being founded upon hearsay evidence, could not be admitted. Mr. Anstey replied to the ojection by citing one or two leading cases, in which he had the honour to appear, and in which it was solemnly decided by learned Judges, in England that a witness, a *litter-*

ateur and a scholar, is competent to speak on subjects which come within the line of his studies]. Witness to Court—I have given considerable attention to the religion of the Vallabhacharya sect, and *am acquainted with the "Brij Bhasha"* language. I am not acquainted with Sanscrit. [Sir Joseph Arnould said the difficulty was how to consider the witness, although a *litterateur*, as a professional or official witness. Mr. Anstey remarked he did not bring forward the witness as a professional man, but as one who, from his studies as an author and a controversialist, was competent to speak with some authority upon the questions asked him. (Cites the case in Nisi Prius of *Bank's* vs. *Buckingham*. The learned counsel said the objection, if not overruled, would be fatal to the entire case for the justification. It was very hard to believe that the witness should not be considered competent to give evidence on matters involved in the libel itself, and in respect to which he had been conducting discussions for several months past, and with which, therefore, he had an every-day familiarity. Mr. Bayley replied that the point was very simple. The witness is asked as to the contents of a book which, for aught he knew, might be in the witness's pocket at the moment; and therefore the very best evidence ought to be produced. Sir Joseph Arnould.—But it is not so in respect to books of science. Mr. Bayley spoke further in support of his argument. The question was not as to cases of foreign law, but as to the contents of a book which was in existence. The witness could not be asked to give the contents of a book which is available. Sir M. Sausse said, the question was put to the witness whether there was any prohibition against revealing the tenets of the Vallabhacharyas? to which he replied that there was a prohibition or penalty men-

tioned in a book. Mr. Bayley raised an objection to the witness being questioned upon the contents of the book. The Court thought those tenets could be proved by the evidence either of the teacher, or the sectary who has received instruction. The first mode would be reliable, and the second would be an admissible mode of giving evidence. If a witness be asked to state what is contained in a particular book, and if he said he had read the book for some years of his life, the sectary so interrogated must produce the book and read from it. Sir Joseph Arnould concurred with the Chief Justice. The evidence of the "taught" is admissible evidence, but any evidence of the contents of any particular book is inadmissible unless the book itself be produced.]

Witness continued:—"Whoever divulges the secrets of his spiritual guide, or of the "Shri Thakoorjee," or the image, or the God, shall be born again in the condition of a dog. The number of doctrines taught by the Maharajas are of such a nature that learned Brahmins are not in a position to teach them. The doctrines which the Brahmins teach our sect are the same that they teach to others. The sacred books of my sect, containing the doctrines of the Maharajas, are named—(witness gives the names of fourteen books.)

(1)—(Translation of certain passages from a work in Brij Bhasha by Harirayaji, entitled "The Sixty-Seven Sins and Atonements and their consequences):—

8. Whoever being a Vaishnava,* respects him who is not a Vaishnava, shall for three births be a shoemaker.

32. Whoever holds (his) spiritual guide and

* The follower of Vishnu.

Shri Thákurji (or God) to be different and distinct, shall be born a *Sichânâ*.

34. Whoever disobeys the orders of (his) spiritual guide, shall go to *Asipatra* and other dreadful hells, and lose all his religious merits.

37. Whoever divulges the secrets of (his) spiritual guide or of Shri Thakurji shall for three births, be born a dog.

39. Whoever, before (his) spirituous guide or Shri Thakurji, sits in (the posture called) *Pudmasan* shall be born a serpent.

54. Whoever displays (his) learning before (his) spiritual guide, shall for three births be dumb. For three births he shall be a dog (or) an ass.

55. Whoever displays activity before (his) spiritual guide, shall be born a *Jarakh*.

56. Whoever without paying his respect to (his) spiritual guide, performs worship (his worship) shall become entirely fruitless.

59. Whoever shows the soles of his feet to (his) spiritual guide or to Shri Thakurji shall be born a serpent for ten years.

Translated by
NANABHAI HARIDAS, Translator.

Bombay, 27th June 1861.

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(2)—(Translation of an extract from a Manuscript in Brij Bhasha called "Ashtakshar Tika.")

Behold! how is Shri Gosaiji* ! He is totally without desires; he is without wants; he is with desires fulfilled; he desires all Virtues; he is possessed of all Virtues; he is the very (personifica-

*Gosaiji is said to be the son of Vullabhacharya the founder of the sect.

tion of) the most excellent Being (God) ; he is all incarnations; he is as beautiful as a million of Kàmdevs;* he is possessed of the six virtues; he is the head of all those who appreciate sensual or intellectual pleasure (or poetry) ; he is desirous of fulfilling the wishes of his devotees; such is Shri Gosaiji ! Why should he want any thing ? He is himself the creator of the (endless) *croses* of worlds, wherein his glory has diffused all over. He is the inspirer (or propeller) of the souls of all animated beings. He is praised by Brahma (the God creator), Shiva (the God destroyer) Indra, and other (Gods). Such is Shri Gosaiji !

Translated by
BALAJI PANDURANG, Translator.

Bombay, 2nd July 1861.

(3.)—(Translation of a passage from a Commentary in Brij Bhasha on a work called the " Chaturshloki Bhagvat. ")

Therefore in Kali Yug, there is no means of salvation similar to worship. Therefore, when a man seeks the protection of Shri Acharyaji alone, all his wishes are fulfilled. We should regard our Guru as God, nay, even greater than God. For if God gets angry the Gurudev is able to save [one from the effects of God's anger] whereas if Guru is displeased, nobody is able to save (him from the effects of the Guru's displeasure.)

Translated by
NANABHAI HARIDAS, Translator.

Bombay, 4th July 1861.

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* Kamdev is God of love.

(4)—(Translation of certain passages from a work in Brij Bhasha, entitled the "Guru Worship.")

(*a*) When Hari (God) is displeased [with any one] the Guru* saves him [from the effects of Hari's displeasure]. But when the Guru is displeased [with any one], no one can save him [from the effects of Gurús displeasure]. Therefore a Vaishnav should serve the Guru with his body and money and please the Guru.

(*b*) But the principal Gurus are Shri Achárya ji and Shri Gusainji and their whole family (called) the Vallabha family. They are all Gurus as is mentioned in the Sarvottamji.

(*c*) Therefore God and the Guru are necessarily to be worshipped. If a man worships God, he goes to Vyàpi Vaikunth.† But by the worship of God he goes to Vyapi Vaikunth only, when he worships the Guru. The worship of the Guru is to be performed in the same way as the worship of God.

(*d*) Offerings are to be made to the Guru. There is not particular quantity of offerings (ordained). You are to make such an offering as you feel inclined to make. But you are to reflect thus :—"In this world there are many kinds of creatures. Of them all, we are most fortunate that we have sought the protection of the illustrious Vallabhachárya ji, Shri Gosainji and their descendants; who are manifestly [incarnations of] God, the excellent Being himself."

Translated by

NANABHAI HARIDAS, Translator.

Bombay, 4th July 1861.

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* Spiritual guide. † Name of a heaven.

(5.)—(Translation of a portion of a Gujrati printed book called "Svadharmavardhak and Samshaya Chhedak" (meaning promoter of our religion and destroyer of doubt,) published by the "Vaishnav-dharmprasárak Mandali" (i. e. Society for the diffusion of the Vaishnav Religion) commencing from page 27; Volume I No, 2, dated in the month of Aso, Samvat 1916 (October and November 1860).

CHAPTER II.

In the above chapter it is stated that God himself has become by parts all the forms, consequently this whole Universe is his spirit, consequently he is at play with his own spirit: with God therefore, (the relation of) my-own-and-other's does not exist. All is his own; consequently the sin of adultery does not affect him.

The sin of enjoying other people's things, affects this world. With God nothing whatever is alien. God has therefore ordained the sin of adultery for this world. Now the ignorant say this: "Should a daughter or son propose to (her or his) father to become his wife, what sin and immorality are contained therein! How sinful therefore are those who entertain towards God the adulterine love." Thus have they argued. Now the intelligent should consider this matter as follows: The Gopis* made the adulterine love with Shri Krishna (is it to be maintained that) therefore they committed sin? Further Mahadevji and Ramchandarji married women of this world, namely, Parvatiji (and) Sitaji; and Shri Krishna married sixteen thousand princesses:—(now) it would follow from the argument of these

* The Shepherdesses of Gokul.

fools, that they too, acted improperly. If as between God and this world there had existed only the relation of father and children (as maintained by them) then Shri Krishna would not have married these maidens. But in God all relations abide. Both man and woman have sprung from God. Wherefore with God the two species of man and woman do not exist. Both these are the spirit of God. Consequently he is at play with his own spirit. In that no sin is incurred either by God or by (this) world. If any sin be* committed (by such conduct) Shri Krishna would not have married the daughters of the kings. (Thus you) see how much contrary to the Shastras have they represented the subject and confounded the ignorant. If there be† any sin committed in entertaining the adulterine love towards God, then the most excellent Being would never have granted to the Veds (their) request, to entertain the adulterine love. That Story is related by Brahmaji to Bhrigu Rishi in Brahad Vàman Purán; which we now recount for the information of the people.

* * * * * *

(Sanscrit text quoted.)

Meaning— Having heard the long offered prayers of the Veds, the Lord spoke in a heavenly voice:—"Oh! you Traditions I am pleased with you wherefore ask such favors as you may desire." When Shri Krishna so spoke, the Traditions said:—

* In this sentence the present tense of the first part does not correspond with the past tense of the second part, but the form as given in the original is preserved (this at the expense of grammar) as implying that what is intended to be conveyed thereby is true in all times.

† Vide note above.

(*Sanscrit text quoted.*)

Meaning—"Oh Lord we regard all thy forms such as Náráyan and others as Brahma invested with attributes in regard to which our belief is not full. And as to that which we call (usually) by the term Brahma, the form of which is without attributes, and which is different from the indestructible Brahma—that form is beyond the reach of our mind and our speech, therefore beyond our knowledge—we request thee therefore, to cause us to see that form." Thus spoke the Traditions of the Veds. Thereupon Shri Krishna, the most excellent Being showed (them) his all occupying heaven, and allowed himself to be seen. The kind of sight which the Traditions had on that occasion is thus described.

(*Sanscrit text quoted.*)

Meaning—On that occasion the Traditions having seen the form of Shri Krishna, commenced to praise him thus: "Oh Shri Krishna, thy form is more beautiful than even a crore of Kamdevs,* at the sight whereof, desire is produced in us. Please therefore satisfy our heart's desire, so that we may enjoy with thee in the form of women. If thou wishest to grant our request, this is what we require." When the Traditions of the Veds spoke thus, the most excellent Being said:—

(*Sanscrit text quoted.*)

Meaning—"Oh Traditions this your heart's desire is very difficult to be satisfied and very difficult to carry out; however as I consent thereto, your heart's desire shall be satisfied; but it will not be satisfied just now." He (further) said:—

* God of love.

(*Sanscrit text quoted.*)

Meaning.—"When the Sárasvat age shall arrive, you will be born as Gopis in Vrij. There, in the forest of Vrinda, I will gratify your desire in a chorus; and your adulterine love for me will exceed all (other love.) By means of such a love, you will gain me and your object will be thus accomplished." In this manner Shri Krishna told the Traditions to gain (him) by adulterine love. These Traditions of the Veds who became the Gopikas are called the Traditional persons.

In the same way, it is related in the Ramayan as follows: (When) Shri Ramchandraji proceeded to the forest of Dandaka (he found) there sixteen thousand Rishis (sages) called Agnikumar performing penance. These Rishis on seeing the person of Shri Ramchandraji, became enamoured. Thereupon, folding their hands, they made a request to Shri Ramchandraji thus—"Oh Lord, a desire is produced in us to enjoy with thee in the form of women. Wherefore be pleased to gratify this our heart's desire." Ramchandraji thereupon having been pleased, granted their request (by saying) "this your hearts's desire will be gratified during the incarnation of Krishna." Hence these Agnikumar Rishis became Gopis in Vrij, whose name is Agnikumar—Gopikas. The tale thereof is recounted in the Kurma (Tortoise) Puran and also in Atharva Ved thus:—

(*Sanscrit verse quoted.*)

Meaning.—These Agnikumar Rishis having been born as women in Vrij, also attained the most excellent Being with the Traditions.

Thus it is related in the Veds and Purans, at various places, that by whatsoever faith, this

soul may serve God, Hari gratifies her desires accordingly. If there be any sin committed in the adulterine love, why did Shri Krishna and Shri Ramchandraji grant them their wish to be women. They would have been displeased there and then and punished (them.) But God is all form. He is in the form of father and he is in the form of husband, he is in the form of brother (and) he is in the form of son. In whatsoever shape one may (wish to) love God, his wishes are complied with accordingly. Nandrayji and Vasudevji asked the boon of the son-form and their wishes of having (God for) their son, were granted. The Gopis loved (God) as their paramour, and he became a paramour and made them happy. And this the ignorant say is son. How contrary is what they say to the Veds and Purans. On this subject a devotee has said in the Saki (verse) thus; " what can the ass who feeds on the dunghill know the pleasures of the Garden ? Sugar is his death, the world's refuse, his life." Meaning—the Asses who feed on dunghills, what do they know of the pleasures of gardens ? that such and such pleasures are to be had in gardens ! By eating sugar the ass dies; and by eating the rubbish that lies on dunghills he lives. Similarly, * those devotees who long for the Para-brahma, (Divine Spirit), their life is sustained by this very adulterine love. What could the non-devotees know of this love: they wish for the love of hell. (To them) to get (good) bodies, women and property, is to meet with God. Even, by experience, it is clearly known that there is no love in any thing like adulterine love. We are therefore enjoined in the

* If this sentence should make out an analogy between the filth-loving ass and the aspirer after the divine spirit, the fault should not be attributed to the translator, but to his text.

Shastras to feel in Hari a love like the adulterine love. For, see! although the adulteress may be engaged in the household work, yet day and night, her mind is directed to the object of meeting her paramour, and if (her) paramour goes to a foreign country, in consequence of (her) separation from him, she does not relish (her) food, does not like to wear good ornaments, and by the excessive grief consequent on the separation, she even gives up her life. To feel such love towards God is described in the Shastras as the most excellent thing. Of such love, these fools say that this love is loathsome. But it is no-where mentioned that by the adulterine love (we should) carry on a criminal intercourse with God; because our souls are not qualified like the Gopis; nor could our souls have immediate connection with God. We will illustrate this by an anecdote. A certain woman was one evening going to her paramour. At the same time a Fukeer was sitting in (her) way praying to God. But as it was dark she did not observe the Fukeer and (accidently) struck him with her foot in passing, of which she was unconscious. Just then the Fukeer did not say any thing. But when that woman returned, that Fukeer addressed her thus. "Oh hussy, you struck me with your foot and passed on but then my attention being fixed on God, I did not speak." Thereupon the woman replied thus "Had your attention been so fixed on God, you would not have been conscious of my having struck you with my foot. See, owing to my contemptible love in my paramour, I did not observe you and was not even conscious of having struck you with my foot. Oh man! had your love really been in God and your attention fixed upon him, how could you have known of my foot having struck you." No sooner

had the Fukeer heard this than he seized his own ear* and prostrated himself at her feet (and said)—"Oh mother, what you have now observed is true. From this day I have adopted you as my spiritual guide. In this anecdote also a lesson is drawn from love. As Dattatreya Rushi derived instruction from twenty-four things, so should we draw the moral from the adulterine love. Thus (we see that our religion) does not tell us to commit adultery.

The devotees of Hari know the intrinsic value of this principle as pointed out in a verse.

She who is in labour can alone know the pain (of birth).

She who is not in labour pulls her by the cheeks (to silence her.)

The woman separated from her lover (can alone) know her grief.

Such is also the case with devotion alone.

Moreover in the same chapter in which the compliance with Tradition's request (is related) it is (further) stated.

(*Sanscrit text quoted.*)

Meaning—If either man or woman serves Hari with real devotion, he or she will gain their wishes in the same way as the Traditions gained (theirs.) It is also stated in the Shastras that whatever may be the object with which one serves the Lord, such his object the Lord will fulfil. This is what is stated. Wherefore those who have good sight, should not walk by putting their hands on the shoulders of the blind,—as is said in the verse :—

"Whoever shall walk by placing his hand on the shoulder of the blind, will fall into a hole, though a good man, and remain behind."

* In-token of acknowledging his own shortcomings.

Those, who do not know the Shastras, are in the Shastras called blind. The people with eyes should not believe their stories, and shutting their eyes, walk by placing their hands on their shoulders; for, the intention of those who keep bad company, is to pollute the Hindus. They therefore by every way find fault with and misrepresent the Shastras, wishing to pollute the people. To this end is improvement (or civilization) going on in Bombay; and it spreads to other countries also. This 2nd chapter on the adulterine love is now concluded.

Translated by

BALAJI PANDURANG, Translator.

Bombay, 21*st June* 1861.

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(6)—(Translation of an Extract from a Manuscript copy in Brij Bhasha, of Pusti-Pravaha-Maryada Tika by Hararaiyji from page 55).

It is stated that (God) in the Pushti-marga (*i. e.* the creed observed by the followers of the Maharaj) abides in the house in the Vaishnavas by the adulterine love; which (I) now describe:—As when we bring another's son to our house, and (or ?) when we keep another's husband in our house by any mode whatsoever, he is won over by excessive affection. If we serve by our body, mind, wealth or by any other mode, than another's son or husband will remain with us. In the same way does God ever abide in our house in union.

Translated by

BALAJI PANDURANG, Translator.

Bombay, 2*nd July* 1861.

(7.)—Translations of Extracts taken from a manuscript copy of a work in Brij language by Goculnathji, called Rasbhavna (Love faith) bound up with several other works into one book).

Extract No. 1 *from the second half of page* 98.

Thus* came Krishna to be called a great Charioteer (a warrior); Similarly in this Pushti System (*i. e.* doctrines taught by Vallabhàchàrya) the most excellent Lord himself having conquered millions of Svámínijis in the Vrij devotee's forest of sexual† enjoyment, came to be called a great Charioteer. Thereafter he began to dance with Shri Svaminiji (the chief mistress) when he could not cope in dancing with Shri Svaminiji and was defeated in (other) sexual commerce.

Extract No. 2 *from the second half of page* III.

Thereafter the female companions (of Shri Svaminiji) having collected all her hairs and twisted them with a string and tied them into a knot, wherefore the same should be regarded thus :—The string in the form of Shri Svaminiji and the hair in the form of Krishna, having coupled together, are enjoying in a contrary manner.

Extract No. 3 *from the first half of page* 119.

There are maidens in the house of Jasodáji (mother of Krishna); they regard Krishna (who is now a child) as their husband. The maidens therefore prepare a swinging bed instead of a cradle, whereon they lay Krishna and enjoy with him.

* The preceeding passages allude to the war which is the theme of the great epic of Maha Bharat, wherein Krishna by his superior power procured the defeat of one of the belligerent parties.

† The terms *sexual* enjoyment and *sexual commerce* are used here and hereafter to signify all the pleasureable and familiar acts that take place between two lovers of opposite sexes. The original terms being *Vihar Surat*, &c.

Extract No. 4 *from the first half of page* 120.

The Lord plays with the followers of Pushti System (*i. e.* followers of Valabhàchàrya), (Such) play is fearful to the opponents, whereas such play is poetic happiness (ecstacy) to the devotees (or initiated).

Extract No. 5 *from the second half of page* 125.

The elephant's ivory toys are (symbolic) of the internal desires of Shri Svaminiji (the chief mistress). So when she goes into the forest, Shri Svaminiji by means of those toys enkindles (in him) the desire to amuse or enjoy like elephants.

Extract No. 6 *from page* 130.

Shri Chandravaliji and Shri Yamunaji and the Virgins and all the (married) women of Vrij join together in a humble speech to Shri Svaminiji* (thus) :—"Let us become your servants. We are not like you. We are your servants. How can we reach God in your presence. Still we are yours." Having heard this humble speech, Shri Svaminiji addresses them thus :—(Though† sagacious and possessed of the sixty-four (good) qualities, yet is she guileless ! though the foremost among the accomplished, yet is she guileless ! Wherefore Shri Svaminiji seeing the humility of all the females, was pleased and spoke thus) :—"Your name is Vrij ratna (*i. e.* the jewel of Vrij) for *you* are the jewel in Vrij ; for there is no other love as the love of husband, which you cherish towards God. Therefore you are (the most) excellent among excellent. Therefore your love for him is greater than mine. Firstly, you keep yourself always holy, you have no connection with any Gopees.‡

* The chief mistress of Krishna otherwise called Gopika.
† This parenthetical part is the author's and not translator's.
‡ Cowherds of Vrij.

Even sons, husbands, &c. in this world are for show in the world's intercourse, but they have no connection with you. And, secondly, you are harmless. You are useful in your sexual commerce. You have no harm or jealousy in you. Thridly, you are penetrated with the passion of love. Your passion is for the different modes of sexual commerce. You are very dear in my heart. In our coupled form you act as (our) servants and with affection wait on us.

Extract No. 7 from the second half of page 131.

Thereupon Shri Svaminiji being pleased tells God thus: "Because they are dear to you, they are exceedingly dear to me. They should be therefore alloted separate groves so that you might carry on sexual commerce (separately with them.)"

Extract No. 8 from the second half of page 133.

There Shri Svaminiji produces from her person millions of female companions. They were named Lalità, Visàkhà, and so forth. Those that were exceedingly skilful and beautiful in sexual commerce, are called Lalità; those that are very expert in the inverted and other postures or positions (at sexual congress) are called Visákhàs.

Translated by

BALAJI PANDURANG, Translator.

Bombay, 8th October 1861.

(8.)—At Page 6th of a work called Vithalesharatnavivarana, the Achârya or Maharaja is called "Shrisha" which is rendered by the commentator to mean the Priyàh, or husband of many women.

Again at page 19 of the book, the Achàrya (or Maharaja) is described as "the* ocean of the Ràs lilà" and also as "one† whose sole aim is the Ras lilà," which means wanton or amorous sport with many women.

(9.)—(Translation of an Extract marked No. 32 from a book in Brij Bhasha, composed by Shri Goculnathji and containing an account of 252 devotees of Shri Gosayinji‡ Maharaj.)

Now, there was Gangà Kshatriani, a female devotee of Shri Gosayinji,§ who was living in that Màhàban.‖ This is an account of her.

The mother of that Gangàbái was very beautiful, and was also very good-looking, and she was in the bloom of her age. On one occasion Gosayinji went to the Mahában and put up in the house of a Vaishnav¶ and that Kshatriyani was then residing close to the house of that Vaishnav. That Kshatriani paid her homage to Shri Gosaiji when she witnessed a very great beauty, equal to a crore Kandraps** Feelings of lust were then excited in that Kshatriani and she then became very much enamoured. So that she did not feel easy without seeing Shri Gosaiji once (daily.) So, she daily got up, and came to Shri Gokul, and having seen Shri Gosaiji, she used then to go her house; and she constantly said in her mind. "Were I to meet him in a solitary (or private) place, the wishes of my heart would be fulfilled." But she could not find an opportunity. Then, one day, that Kshatriani thought in her mind, "when Shri Gosaiji goes to the privy, I will go there."

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* Ras lila mahodadha. † Ras lilak tatparyah.
‡ A female of the Kshatri caste. § High priest.
‖ The name of a forest—literally great forest.
¶ A worshipper of Vishnu. ** The Hindu Cupid.

So, one day, that Kshatriani remained concealed in the privy; and afterwards, Shri Gosaiji went to the privy, when that Kshatriani said, "Maharaj; Pray fulfill the wishes which I have in my heart." But Shri Gosaiji refused (saying) "I do not know any thing about that matter." That Kshatriani then became very obstinate, when Shri Gosaiji getting angry said, "Do not be obstinate, and the wishes of your heart will now be fulfilled, without your leaving (your) house. These are my (prophetic) words and therefore you may go home." That Kshatriani having heard these words of Shri Gosaiji, went away. Afterwards, one day, when that Kshatriani was asleep, she dreamed a dream in her sleep, that she had connection with Shri Gosaiji, and from that very day, that Kshatriani was in the family way. Afterwards when the time of pregnancy was completed, she was delivered of a daughter. She was extremely beautiful, was a fountain of good qualities and was beautiful. She was then named Gangabai. Then that girl grew up; after which she was caused to tell her name to Shri Gosaiji.

Translated by

NARAYAN DINANATH, Translator.

Bombay, 18*th September* 1861.

A narrative, related first of all, by the Shri Acharyaji,* with his own mouth to the Vaishnavas, on a certain occasion and (afterwards) related by Shri Gopinathji to the Vaishnavas.† There was a Bhil‡ (and a Bhili) being two persons, husband

* Valabhacharya, the founder of the sect.
† The worshippers of Vishnu.
‡ A person belonging to a wild tribe in India.

and wife. They used to go to a Jungle and to bring (fire) wood daily, and they used to maintain themselves by selling the wood. There was another Bhil, who was also in the habit of going to the same Jungle to fetch wood. An intimacy then arose between the wife of the Bhil and the other Bhil. At first, the two persons, husband and wife used to go together for wood. She then fell in love with the other man. Afterwards that woman commenced going for wood to another Jungle, with the other (or stranger) man, with whom she had contracted an intimacy. So the woman went with him to a Jungle, and there was a temple of God in a certain spot in that Jungle. The two persons, having gone there, used to sweep and clear the temple and then rest themselves there. They did so for several days, when being overpowered with love, they took to singing. They then both got up from that place, and went to their respective houses. Afterwards, some one came and told the husband of the woman, that his wife lived (or was in love) with such and such man, and that those two persons were in the habit of going to such and such place in such and such Jungle. Afterwards, one day, the husband of the woman, followed his wife to the Jungle. The two persons went first, and having gone there, they swept and cleared (the spot) all round the place of God, that was there, and then sat there in happiness. The husband of the woman then witnessed while standing (there), all the acts of the two persons, and when the two persons had completed their worldly (or carnal) pleasures, the husband of the woman, killed them both on the spot. The angels of Dharmaraj* then came for the two persons, and immediately after them came

* The deity that judges dead and punishes the wicked.

the angels of Vishnu, when the angels of Vishnu said to the angels of Jam "Why have you come here? Shri Thakurji (God) has conferred on them the best place (in the heaven) and these two persons will moreover obtain better, and a more desirable place than this (in the heaven)." The angels of Vishnu then took the two persons with them, and having gone there, they made them stand before Shri Thakurji, (God), when Shri Thakurji, told the two persons to ask of any thing they liked. They then having folded their hands together in a suppliant manner) made the following representation :—"Maharaj, we have committed a very mean act; what is the cause of your showing so great a regard towards us?" When the angels of Vishnu told them as follows :—"It is true you two persons have committed a mean act, but you cleaned a temple of (God,) and Shri Thakurji (God) has favourably accepted the service performed by you, and therefore you both have now obtained the best place (in the heaven.") "Having therefore become pleased with you, I tell you two persons, that you may ask (for any thing you like)." The two persons then said, "Maharaj, if you are pleased with us, and wish to confer a favor, then we pray, that we may be born in the mortal world, and that we, having become husband and wife, may serve you. Pray, favor us with a compliance with this (request.)" When Shri Thakurji (God) said "Go, your wishes will be fulfilled." Then the two persons became incarnate in this world. The man was born a son of a Raja and a woman was born a daughter of a Raja.

Translated by

NARAYAN DINANATH, Translator.

Bombay, 12*th November* 1861.

(10).—(Translation of an extract marked No. 62, from a book in Brijbhasha, containing the account of the eighty-four Vaishnavas.)

The 75th Vaishnáv. A narrative of Krishnadas Brahmin, a devotee of Shri Acháryaji,* the great lord. Krishnadas was living in a village. He was a worshipper of Bhagvat (God.) There were five or ten Vaishnávs, who, on one occasion, were going to Adel† for the purpose of paying their homage to Shri Acharyaji, the great Lord. They came to the house of Krishnadas. At that time, Krishnádás was not at home. He had gone out on some business, and the wife of Krishnadas was (at home.) When the Vaishnavs came to the village, Shri Krishnadas had gone out to some (other) village. After that, she went inside the house, and began to consider as to what she should do now. She then recollected, that the Banian Daimaro? always said to her, that she should meet him, (and that) he would give her what she might ask for. So (she said to herself) " I will fetch provisions and other articles from his shop today, and will tell him, I will meet you today"'— Give me the provisions and other articles, that I require." Having made this determination, she set out, went to his shop, and having given a promise to him, the woman brought all the provisions, and other articles; and having come home, prepared the dinner, and presented an offering, of it to Shri Thákurji (God); and having removed the offering, at due time, she caused the Vaishnavs to feast on the blessed food, of which the Vaishnavs partook in good style. After that, Krishnadas came (home) in the evening, met all the Vaishnavs, and after saluting them, he entered his house,

* (A title applied to Vallabh the founder of the Vaishnav sect.
† (Name of a town.)

and asked his wife, what the news was, and whether she had given food to the Vaishnavs. She replied that she had given them food; when Krishnadas inquired, whence she had got the provisions, and other articles; when the woman related (to him) all that had taken place. Krishnadas was thereupon much pleased with (his) wife. Afterwards, the husband and wife both jointly partook of the blessed food, and Krishnadas then went to the Vaishnavs, and passed the whole night in talking on the praise of God. When it was morning, Krishnadas, having despatched all the Vaishnavs, they walked away, and Krishnadas went with them, to a short distance, to see them off. Afterwards, he came home, presented the food offering to Shri Thakurji (God), and then having removed them as usual, he covered them up and placed them aside. When Krishnadas returned home in the evening both the husband and wife jointly partook of the blessed food. Krishnadas then said to his wife:—"You gave a promise yesterday to the Banian, and the Banian must be expecting (you), and that therefore the promise given to him must be fulfilled." The wife thereupon having rubbed her body with an ointment,* and bathed herself, and having ornaments, as are usual amog the women, she set out. It was rainy season, and it had rained (that day), and there was mud on the road, in consequence whereof, Krishnadas said, "if you place yourself on my shoulder, I will convey you there, and return; otherwise your feet will be soiled with mud, as there is a great deal of mud on the road; and if your feet should get soiled, the Banian would treat you with disrespect."—Krishnadas, thereupon placed his wife on his shoulder, and placed her down near the shop of the Banian; when the

* A scented pomade used by Indians as toilet.

woman called out to the Banian, and asked him to open the door. The Banian then opened the door, and took the woman inside, and then brought some water to wash her feet with, when the woman said to the Banian, my feet are not soiled with mud." The Banian then said, " There is a great deal of mud on the road, and how is it that your feet are free (from it)." When the woman said to the Banian " you had better proceed with your business," when the Banian said, " you must tell (me) the circumstances"—The woman then said to the Banian:—" My husband placed me on his shoulder, brought me here and went away." On hearing this account the Banian was struck with wonder and he questioned her on the whole subject, and asked the cause of it, and requested her to tell him all; when the woman related to him all that had occurred. On hearing it, the Banian thought of himself with contempt, and said, " Happy is your life whose mind is so pure" and having put his hands together in a suppliant manner, saluted (her), and said "Pardon me my offence"—" Regard me with kindness"—you are my sister."

Translated by
NARAYAN DINANATH, Translator.
Bombay, 30th November 1861.

(11.)—(Translation of extracts, marked No. 58,' 59," 60,' and 61,' from a book in Brijbhasha, called the Vachnamrat* of the Pushtimarg'† of Shri Goculnathji.)

(*No* 58. *Page* 9.)

He who getting angry, in his heart, maligns (his) Guru,‡ and utters harsh terms towards (his) Guru,‡ becomes dumb and after that he becomes

* (Precept as sweet as nectar.)
† (The name of the saystem of religious doctrines established by the Maharaja.)
‡ (Religious precepter.)

a serpent. He is then born a creature of the region of the vegetable kingdom and after that, he is born a creature of the region of the dead, (or Ghost.)

(*No.* 59. *Page* 10.)

As he (Vaishnav) remembers Shri Bhagvan (God), in the same way, he remembers and repeats in his mind the name of his Guru*

(*No.* 60. *Page* 12.)

One having become a Vaishnav,† should not see faults of (or in) others. He should not hear them with (his) ears. Even if he should see them with (his) eyes, and hear them with (his) ears, still he should not consider any thing of them in (his) mind. He understands (or says to himself) as follows:—" I, who have fallen into this Avidya (ignorance), in the form of maya (delusion), see nothing but the faults; (but) there is not a particle of fault therein."

(*No.* 61. *Page* 20.)

He does not consider himself happy, by the acquisition of any thing. By hearing the Shastras of the duties of Grahasta‡ doctrines, from any one, he does not allow himself to be absorbed into the Lavkik§ (and) Vedik.‖ The moral precepts of the Shastras connected with the Pushtimarg, should be freely heard and related. All other Shastras cause one to swerve from the Pushtimarg. This should be firmly believed in one's own mind.

Translated by
NARAYAN DINANATH, Translator.

Bombay, 30th November 1861.

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* (Religious precepter.) † (A worshipper of Vishnu.)
‡ (A person belonging to the Second of the four religious orders of the Hindus.)
§ (Popular doctrine). ‖ (Ceremonial doctrine of the Vedas.)

(12.) Translation of an extract from a book in Sanskrit, called "Virchita Bhaktee Sidhant Vivruti" * by Shri Goculnathjee.)

Therefore, in the beginning, even before ourselves enjoying wives, sons, &c. should be made over; [because of] the expression "Sarva Vastu" (i. e. all things.) After marriage, even before, ourselves using her, her [wife's] offering should be made with the view that she may become useful [to ourselves]. So likewise even after the birth of a son, sons, &c. should also be made over. On all occasions [and] on account of all occasions, the thing to be used on that occasion should be made over. After making [the things] over, the different acts should be done.

Translated by
VISHVANATH NARAYEN MANDLIK.

8*th November* 1861.

(13.) Translation of Siddhant Rahsya.

At midnight on Ekadashi in the month of Shrawan Shood, God visibly uttered the [following] words which are here repeated word for word.

By entering into relation with Brahma, all persons' sins of body and mind are washed away. These sins are said to be of five kinds, viz. those which are congenitals; those which owe their origin to time and place; those described in the Vedas; those which are results of intimate association; and such as are produced by contact. These sins are not and never to be believed in (after the above relation has been established). Otherwise (that is, when such a relation has not been contracted) expiation of sins never takes place. That which has not been, in the first instance, dedicated should not be accepted. Offerers,

* A commentary of Goculnathjee on Siddhant Rahsya.

after making their offerings, should do with them what they like, such is the rule. That offering which has (in the first instance) been engaged by its lord is not acceptable to the God of Gods. Therefore in the first instance in all doings all things should be dedicated. That which is given should not be taken because the whole comes to belong to Hari, is the doctrine of other sects. (With us) the relation which subsists in the world between [a master and his] servants, holds good. And every thing should be done accordingly, that is, after dedicating it should be enjoyed, and hence it is that the Brahmatva or the quality of Brahma is obtained. As when all merits and demerits obtain the quality of Ganga, all of them promiscuously have the quality of Ganga, so now that such is the case here. Thus is concluded in Siddhant Rahsya composed by Vallabhacharya.

Translated by

JAVERILAL UMASHANKAR.

(14.) (Translation of a piece in verse taken from the first half of page 65 of a manuscript book of collection of various religious works.*)

(His) only firm support is that of Vallabhadhisha, †
(His) only habit (that) of serving (God) mentally.
(He is) one who has given up the popular and the Vedic (opinions)
A supplicant for the protection of the Gopisha ‡ 1
(He acquires) humility, faith, and knowledge by singing the praises.
() ‖ Both (sexes) know the faith of the women§ of the hamlet of the cowherds.

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* *His, he* and *him* given in brackets here, evidently allude to orthodox Vaishnava.

† Vallabhadhisha is literally *Vallabh, superior lord,* which according to rules of construction may mean either, *Vallabha, the superior lord, or the superior lord of Vallabha.*

‡ Lord of the Gopies.

‖ If *both* is made to qualify *faith,* then the line would run—he knows the twofold faith of the women, &c.

§ *By women, &c.* are meant *the Gopies of Vrij.*

The name of Krishna swells (him). Not a moment are the Commandments avoided (by him).
He brings the faith in the made precepts to (his) mind and heart. 2
(He) adopts the society of the good knowing them (as) divine.
(He) sees not the faults and speaks the truth.
The ten principles of the Pushti sect these are the religion, these the practice, says Dwarkesh (he) constantly keeps in the heart. 3

[Translation of a piece in verse from the second half of page 63 of a manuscript book of collection of various religious work.]

Of these feet the support is firm ;
Without the glory of the moon of Shri Vallabhas' nails, there [would be] darkness in the whole world. 1
There is no other means in this Kali (yug) by which the solution of the problem of salvation is obtained.
Soor [das] says [this] saying—the two* fold blind man has a worthless head. 2
Great is the assurance of Shri Vallabha.
Oh, thou mind why dost thou wander [and waver] if thou wouldst have the fruit given. 1
All (his) children beginning with Shri Vithal [and] Girdhar have saved the world.
They administer the spell of the name of "Purshotama Prabhu" by placing their lotus-like feet on the heads (of the Vaishnavas.)

Translated by
BALAJI PANDURANG, Translator.

31*st January*, 1862.

"One of these books is in the Gujaratee language, the rest are in Sanscrit and the "Brij Bhasha" language. There are songs in the Gujaratee language sung by the female devotees of the Maharajas: they are sacred, religious songs. They are sung by the female devotees when the Maharajas are invited to the houses of Vaishnavas. I hold two of these songs in my hand. (Mr. Anstey read in English translation of them by Mr. Flynn, and puts them in as exhibits.

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(15)—(Translation of three Gujarati Songs marked No. 51.)

Songs sung before the Maharajas, by their female devotees.

An excitement, extreme and great, in my body is created,
The azure coloured† beauteous husband,‡ with me is sitting. 1

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* i, e. Physically and spiritually.
† An appellation of Krishna.
‡ This word may also be rendered "the best of men."

Without seeing (his) beauteous face, even water, I will not drink,
The amourous and beauteous husband, by seeing oft and oft I'll live. 2.
Restrain me not, Oh ! my mother,
To pay my homage to him, daily I will go. 3.
As to the connectionship, that of the Savalya* is the only true one.
(And) all others, appear to be but imperfect. 4.
Him, who tells, may tell, we will permit to do so,
And to them (with indifference) we shall listen. 5.

If to foreign lands, you the descendant of Vallabh,† should go,
Soon do you return.
And to (us) gentle women, messages do you send.
If to foreign lands. 1

To your commands, obedient we are,
Us, the suppliant, you have accepted, with all your heart.
If to foreign lands. 2

A pleasant look, you the compassionate, by casting upon us,
Of our bodies and hearts, have deprived us.
If to foreign lands. 3

For your sake, the sense of public shame, I have not entertained
A great desire, I entertain for your feet.
If to foreign lands. 4

Many such intreaties, (your) female slaves are making,
If soon you will return, pleased will become (your) female slaves. 5

The descendant of Valabh is the amorous Kana,‡
Enamoured, he has made (us), in the roads of Vraj.§
Bowing down ! 1

See, sisters, the full moon-like face,
With his sharp eyes, my heart, he has enticed and attracted.
Bowing down ! 2

To that dear (soul) having become a female slave,
The public shame, I will now no longer fear.
Bowing down ! 3

Now, sisters, the household affairs, I cannot perform,
By seeing the dear (soul) my heart has become enticed.
Bowing down ! 4

A descendant of Valabh is the amorous Kana
The sound of the jingling of (his) toe-rings has deprived me of my heart.
Bowing down ! 5

The very personification of God, you are,
Having married (or accepted) the Valabh husband with extreme love
Bowing down ! 6

But our submitting to the Valabh husband, happy we shall become
By his association, the Vaikunt¶ we shall obtain.
Bowing down ! 7

Translated by
NARAYAN DINANATH, Translator.

Bombay, 12th November 1861.

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* An appellation of Krishna.
† The founder of Vaishnav sect. ‡ An appellation of Krishna.
§ A city in Upper India. ¶ The paradise of Vishnu.

(16)—[Translation of a song at the end of a lithographed Gujrati book of poetry.]

O life of Vraj* ! I pray the,
Illustrious *beloved one* [*source of*] *pleasure.*† Moon of Gokul,‡
An invitation send with speed.
Without seeing thee, O illustrious, beloved one,
Say dear, how am I to live ?
How shall my heart be restrained ?
[My] eyes with tears are suffused [O Life of] Vraj ! 1
Hearken attentively to [my] prayer, O revered mother Jamna,¶
The pangs of separation are unendurable,
Now, how am I to live ? [O Life of] Vraj ! 2
How shall I abide at a distance ?
Say dear, whence this law,
Neither of us is of today or yesterday.
[Our] love is from the first [O life of] Vraj ! 3
O Hari,§ in thy heart retain
[Our] love [which] is of former times.
Be merciful, O Lord of the lowly and destitute !
Otherwise I will put off this earthly tenement.
O life of Vraj ! An invitation send. 4
I want a resting place amidst the jasmine [bowers] of Vraj.
That always exist in the town of Gokul,
On the banks of the Kalindri,‖
At the landing place of Thakarani,‖
O life of Vraj ! An invitation send. 5
When shall I satisfy my eyes with a full view
Of the landing place of Thakarani,
Inwardly I have a great desire,
I am longing to be called to Vraj,
Of life of Vraj ! An invitation send ! 6
I am withered like [dried] cinnamon
O Hari, brother of the plough$ bearer
I can have patience no longer.
[My eyes] are constantly filled with tears
O life of Vraj. I beseech thee ! 7
What wrath is this against [me] an innocent person.
O Lord, [who art] merciful to the humble,
Regarding [me] as thy servant,
Protect [me thy] servant,
O Life of Vraj, I beseech thee ! 8

A true translation,
J. F'LYNN, Chief Translator.

Supreme Court, Translator's Office,
31*st October*, 1861.

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* [Vraj signifies a village or station of cowherds. *Krishna* the Eighth incarnation of the Hindu deity. *Vishnu* is here addressed as the chief of the Cowherds.]

† The expression *Vallabhananda* in the text rendered in the second line by "beloved one [source of] pleasure," may also be translated child [or Children] of Vallabh ; but the song is evidently addressed to Krishna.]

‡ [The name of the village at which *Krishna* was brought up.]

¶ [The name of the river here personified as a goddess, on the banks of which the village of *Gokul* is situated.]

§ [A name of *Krishna*.] ‖ [Names of the river Jamna.]

$ A title applied to the deity *Balibhadra* the elder brother of *Krishna*.

"Three of these songs were printed at the Bombay "Union Press" the property of the co-defendant. It is said in these songs that Kana or Krishna (the Maharaj) is the descendant of Vallabh. That is the belief entertained by the sect. I am somewhat familiar with and know the History of Krishna. He is the subject of several "avtars" (incarnations,) God (Krishna) came to this earth in the shape of man; and 16,000 "Gopees" "female cow-herds obtained salvation by falling in love with Krishna, "Ras Lila" means amorous and wanton sport with women. (Witness reads the different meanings of the word 'Lila' from the late Horace Hayman Wilson's Sanskrit and English dictionary.) There is no sport imputed to Krishna, which is not amorous sport. When a Maharaja dies, he is said to extend his journey to the other world in amorous sport. The Maharajas have neglected the instruction of the sect in their peculiar doctrines. In the strict sense of the word, they are not the preceptors of religion. The vow (or "kanthee") is applied to males and females at the age of eight or ten. Both in the songs and in the vow, reference is made to *tun*, *mun*, and *dhun*, (body, mind and property.) A person who makes a vow to give all his "dhun," binds himself to give his property, his wife, his son, and his daughter to the Maharaj or Thackoorjee. I have heard of instances in which these offerings have been practically made by the most devoted followers of the Maharajas. It is a matter of general reputation in the sect that all the Maharajas have carnal intercourse with the wives and daughters of their more zealous devotees, Girls are sent to the Maharajas before being touched by their husbands. I know of such instances. The khowledge of these practices, among the sect does not in any way diminish the influence and respect of the Maharajas.

Within the period of my recollection, the Bhattia caste, composed entirely of Vaishnavas, have taken steps to put a stop to these practices of the Maharajas. In 1855 the Bhattias convened a meeting of the caste, at which it was resolved that females should not be allowed to visit the Maharajas unless at certain fixed hours, when they may not have any opportunities for carnal intercourse with the Maharajas. According to the Hindoo religion, the laws of God are unalterable, as regards morality, piety, &c. It is considered a sin to act contrary to them. Adultery is a great sin. Handling the breasts of females and throwing "gulal" on their persons is considered as a sin equal to adultery, according to the Shastras. "Red powder" (gulal) is a sign of a bad design, of an adulterous character. During the Holee holidays, the Maharaj throws *gulal* on the breasts of female and male devotees, and directs the current of some water of a yellow colour from a syringe upon the breasts of females. During the "Ras" festival, wives and husbands collect promiscuously in a room, and have carnal intercourse promiscuously among them. The "Ras" festival is held unto three or four times in a month. The Maharaj has actual sexual intercourse with many women, and is called the husband of many women. I used the passage in the libel. "You Maharajas, acting up to the doctrines of that commentary," &c., in a hypothetical sense, and with no other meaning. I am not ashamed to say there was a time when I followed the doctrines of the Vallabhacharya religion more strictly than I do now. I and others have prosecuted enquiries on the subject of the religion of our sect. The views of our small party were directed towards the doctrines as well as towards the history of the

religion. In my sect, particularly, our labours have been rewarded with abuses. I was an author and a journalist before I became a reformer. The tyranny and evil practices of the Maharajas induced me to write against them. Besides my own works, there were pamphlets, books, placards, &c., published in different languages to expose the practices of the Maharajas. They were published long before my time, and one of them was a drama written 250 years ago. There was no prosecution for libel by a Maharaj except this. My object in writing was to get the Maharajas reformed. The plaintiff had organs to oppose us. One of them was the *Vishnoo Punch* newspaper, patronized by plaintiff; another was the religious pamphlet edited by plaintiff himself. Plaintiff wrote several times letters to the *Chabook* and *Satya Prakash* and other newspapers. The communications were made to me through Goverdhundas, plaintiff's secretary. Plaintiff has been in Bombay for some years past; he returned to Surat last year. He showed great interest on the subjects of female education and widow re-marriage. Subsequently, at a public meeting, plaintiff declared himself against re-marriage. From that time, he became unfriendly to me, and discussed with me, through the publications, the questions of re-marriage and the creed of Vallabh. These are the pamphlets in which the discussion was conducted by plaintiff.

(17.)—(Translation of a passage at the end (page 23 and 24) of a Gujarati printed periodical, entitled, "The Propagator of our Religion and the Annihilator of Doubt.")

Thus comparing the antecedent and subsequent connection (i. e. the context) of the Shastras, whatever meaning is established that only is the

true meaning of (any passage &c. of) the Shastras, and the authors of the Shastras have prescribed this as the sole method of determining the meaning. Whoever, therefore may wish to write upon this lecture should do so, by supporting his opinions by quotations from the Shastras. And whoever shall find fault merely according to his erroneous farces without quoting the Shastras, should by all people be considered as unworthy of being believed.

A true translation,
J. FLYNN, Chief Translator.

Supreme Court, Translator's Office,
24th January 1862.

(18.)—(Translation of a passage at page 37 of a printed Gujarati book entitled, "The Propagator of Religion and the Annihilator of Doubt."

CHAPTER THE FOURTH.

The "Satya Prakash" newspaper in the issue of the first (day) of the first Aso Vad Samvat 1916 (30th September 1860) the Editor of the "Satya Prakash" has published and made known to all the people as follows :—In the first number of the book (periodical) entitled, "The Propagator of Religion and Annihilator of Doubt, Shri Jadunathjee Maharaj has quoted a stanza from the sacred Gita and has informed all the people, that whoever behaves contrary to the precepts of the Shastras, does not acquire happiness in the next world. But in the Ten principles his own ancestor Shri Dwarkeshjee Maharaj has inculcated that (we) should act laying aside the precepts of the Veds. Thus he has represented to the people. But in no one of the Ten principles is it stated that (we) should abandon the precepts of the Veds. Nevertheless this person (the editor) says so. But as to

the meaning of the Ten principles which he has given in his paper he has extracted the same from a book called Kavi Charitra composed in Bombay by Janardhan Ramchandra and published in the Marathi language. But who knows for what reason he has assigned a contrary (i. e. wrong) meaning to these principles. Of that the Editor of the "Satya Prakash" is quite unaware; as is described in a Shaki (couplet.)

He who may walk on the support of opium will fall to the ground.
Although he may struggle with his legs, he will never get up.

Of this description is what the Editor of the "Asatya Prakash"* says. But as the light of the fire fly is rendered nought before that of the sun, so in regard to Brahm (i. e. the universal soul) will his false meaning be nullified before the true meaning. Of that he has no conception at all. In these Ten principles of the way of strengthening (Devotion, &c.) Shri Harirayji has benefited all by giving (them) the essence of the Veds and Shastras. On these same Ten Principles Shri Dwarkeshji Maharaj has composed a short stanza. Therefore O Vaishnavas do you behold what is stated in this (stanza.) The musical mode of (chanting) the Ten Principles is (termed) Prabhati (Light).

A true translation,
J. FLYNN, Chief Translator.

Supreme Court Translator's Office,
25*th January* 1862.

(Translation of a passage at page 46 of a printed Gujarati book called the "Propagator of Religion and the Annihilator of Doubt.)"

What deception! what rascality this (is)! Oh, you Vaishnavas! God has given you under-

* The meaning of the word "Satya Prakash" is Light of Truth, Asatya Prakash means Light of Untruth.

standing and sense. Therefore do you reflect. Thus the Editor of "Asatya* Prakash" has written, but on examining the meaning of these Principles every one will immediately understand whose is the deception and whose the rascality, Oh! You (Vaishnavas) the more the calumniators shall dig into this way the more will the people comprehend the strength of this way.†

A true translation,
J. FLYNN, Chief Translator.

Supreme Court, Translator's Office,
25th January 1862.

(19.)—Translation of a passage at page 25 of a Gujarati printed book entitled "The Propagator of our religion and the Annihilator of Doubt" No. 2 vol. 2.

In (his issues of the 23rd September 1860 and 30th September) the Editor of the "Satya Prakash" has asked Shri Jadunathjee Maharaj questions as follows:—

1. First question, you write that the Shastras, have been made by God. Then of the four Veds you believe in one the Yajurved. That Yjurved consists of 101 Shakhas (branches) of them you believe in one, the Apastambh Shakha. The others you have rejected. If the Shastras be the work of God, then all the passages should be regarded as God's. Having put such a question it is represented to the people that he (the Maharaj) does not believe in all the Shastras, whereas he represents to the people that he believes in all the Shastras. And this statement is such as the people are likely to regard as true because among the Hindu community there prevail many ways (i. e. religious

(* The meaning of Satya Prakash is Light of Truth. Satya means Truth. Asatya Prakash means Light of Untruth.)
(† i. e, way of religion or religious persuasion.)

persuasions) wherefore there exists a doubt in the minds of the people as to which doctrine is true and which doctrine is false, in consequence of which people's minds are alienated from their religious persuasions.

A true translation,

J. FLYNN, Chief Translator,

Supreme Court, Translator's Office,
25th January 1862.

Translation of a passage at page 29 of a Gujarati printed book entitled, "The Propagator of our religion and the Annihilator of Doubt." No. 2. vol. 2.

And the Editor of the "Satya Prakash" says that the works treating of Vallabh's religion are kept concealed in the mansions, lest the Brahmans should refute them. But this statement which he has made is entirely incorrect. For these works written in the (Brij) language are in the houses of all the Vaishnavas. But those Vaishnavas do not give them to persons following other religious persuasions because they are not worshippers of the Supreme Being and speak ill of the way of emancipation (by) Devout Adoration.

A true translation,

J. FLYNN, Chief Translator.

Supreme Court, Translator's Office,
25th January 1862.

"Plaintiff wrote a letter which was published in the *Chabook* of the 29th September 1860. In the "Propagator of our own Religion," of about the same period, there was an attack upon the "reformers," that is, I and my friends. I was challenged to review the plaintiff's lecture published in his pamphlet. That was after the article, con-

taining the alleged libel, appeared. Plaintiff called my paper, named the *Satya Prakash*, (Light of Truth,) the "Light of Untruth."

(20.)—(Transalation of a portion of a letter printed in the correspondence columns of the *Bombay Chabook* Gujarati Newspaper of the 29th September 1860, and headed "Shri Jadunathji Maharaj and the *Satya Prakash*.")

Your statement is simply that of ignorance, for I shall give a short illustration (thereof) as follows:—There are two travellers, of whom one has to go to Walkeshwar, and the other has to go to Byculla. Now, he who wishes to go to Byculla goes by the way leading to Byculla, and he who wishes to go to Walkeshwar goes by the way leading to Walkeshwar. Now, in the opinion (of each) of these two persons is the road followed by one and the other (of them) a wrong (road)? No, it is not. But why will he who does not wish to go to Byculla, go by that way? Now the established conclusion (from this is that) for souls to go to different places there are various different means mentioned in the Shastras; consequently to whatever place a man may wish to go, the way to that place he follows.

Written by Goverdhandass Gopaljee, Bombay, the 27th September 1860.

A true translation,
J. FLYNN, Chief Translator.

Supreme Court, Translator's Office,
24th January 1862.

Eighth Day, Thursday, 6th February 1862.

Karsandas Mooljee, further examined by Mr. Anstey.—(The learned counsel reads from the pamphlets issued by plaintiff, passages expressive

of adulterous love for and amorous dalliance with Krishna, personified in the Maharaj.) "From the measure of enlightenment in my sect, I do not think it likely that they are able to understand the nice distinction made in the concluding passage of that article, that is, the Maharajas cannot be exculpated from the horrible doctrines mentioned in these documents, by the distinction in question. (Mr. Bayley objects to the question and the answer. Objection overruled.)

To Sir M. Sausse.—"That distinction is not the opinion of the less reformed of the Vallabhacharya sect.

Witness proceeded to say.—"I think that the plaintiff's power, influence, and respect have in no way been affected by the controversy or the alleged libel. They are just the same. Before the commencement of the controversy, there was dissatisfaction in my sect at the conduct of the Maharajas. The plaintiff had complained of such conduct in a hand-bill issued by him from the *Chabook* press on the 19th September 1860, and circulated among the Vaishnavas.

(21.)—Translation of a printed Gujarati hand-bill. *On the part of Shri Jadunathji Maharaj a warning to the Vaishnavas.**

By order of Shri Jadunathji Maharaj may it be known to all the Vaishnavas as follows:—The Lord has graciously given to them this human body. Moreover he has caused them to be born in a high caste. And you have sought the protection of the sacred great Lord. What a body this is which saves us from the pains of being born form of eighty-four hundreds of thousands of

* Worshippers of *Vishnu* [whose impersonation or representative is the Maharaj.

wombs,* and dying, and it enables us to attain to (union with) the Lord. An invaluable body such as this, you employ day and night in occupation tending merely to obtain a livelihood. Not only this, but you keep much bad company; and for two hours even, with a mind free from solicitude you do not worship (the deity) Hari, or call to remembrance (his) name. Observing this I feel exceedingly concerned on your behalf, for after (the dissolution of) the body, what will be your condition? And after (the dissolution of) the body you have to deal with (the deity) Shri Thakurji. How is it you do not meditate a little upon that?

For some time (back) the people of Bombay blamed the spiritual guides (saying) thus: The instructors of the sacred great Lord's (religious) course do not impart (spiritual) knowledge to the Vaishnavs. "But after my arrival here, the reading of (religious) books was carried on and the discussion of questions was carried on, in order that all the Vaishnavas might acquire a knowledge of their own religious course. But no Vaishnavas came to listen to that. Now what can the spiritual guides do? In the Shastras it is said, when a pupil being anxious himself asks his instructor, then only is the instructor to give instruction to that pupil. But should he give instruction without being asked, the instruction would have no effect on the pupil's mind. Such instruction is like giving food to one who is not hungry to whom it is tasteless. Such is the mode of giving instruction prescribed in the Shastras. Still I continued to hold discussions. However

(* Meaning that the soul of a Mortal who devotes himself entirely to the worship of the Deity in this life is exempted after death from future birth throughout all the various orders of animal existence.)

when no one attended them, I caused to be printed monthly a magazine, in order to enable the Vaishnavas to acquire a knowledge of their (religious) course and intimated (that they were) to purchase that magazine. They were told to subscribe their names as purchasers of that magazine, but in the list of subscribing Vaishnavas, names have been written (the particulars of) which are written (below) for general information.

In Bombay there are about 12,000 twelve thousand houses of Bhatias Vaishnavas, of whom 5,000 five thousand are Marjadis.* And the Bhatias assume the name of "worshippers of Vishnu alone," and are considered the chief of all the followers (of Vallabh) of all those Bhatias only 100, one hundred individuals have written their names and of the Banias 120, one hundred and twenty names have been written. There are four Brahmans, eight Marwadis, and two Mooltani Vaishnavas. Out of the whole city of Bombay so many names have been written. As to most of the names they have been written by poor people.

From this it will be immediately perceived by all persons what sort of understanding the people of Bombay have. No one cares to understand his own (religious) course. Not only this, but no one cares even to obtain (the favour of) Shri Thakurji. It clearly appears that the only thing they care about is blaming their spiritual guides. Now in this matter I am helpless.

Alas! O Vaishnavas, you have come and sought the protection of the sacred great Lord. Therefore I find it necessary for me to advise you to understand your (religious) course. If

(* A class of individuals strict in observing certain ceremonies, &c.)

you do not understand it, what will be your condition in the end? Reflect on that considering you as my (disciples) I thought of imparting to you a knowledge of your (religious) course through the magazine, for which, however, you could not subscribe. Consequently it appears that you do not care to read even books relating to your own (religious) course. You will have indeed to spend R. ¼ for the magazine, but by reading it you will be exceedingly benefited. In the first place you will understand your (religious) course, as it is contained in the Shastras, by (understanding) which you cannot be corrupted by evil company. Not only this, but you will be able to answer the objections urged against your excellent (religious) course by several people without understanding it. Secondly you will acquire a love for devotion directed to (the deity) Hari. In consequence of that love you will obtain (the favour of) Shri Thakurji, and you will be exempt from the pains of (successive) birth and death, and from the pains of hell. Do you therefore open your eyes and reflect a little. You will not again obtain such an opportunity of understanding your (religious) course.

Copies of the Magazine for this month of Bhadarva (August, September) having been printed have arrived. Therefore every Vaishnav who cares to understand his (religious) course, and who may care to obtain (the favour of the deity) Hari should come to my place, and he is to take (a copy of) the Magazine, and write his name for a copy monthly in order that, that Magazine may be regularly delivered to him every month. After all, there is the proverb (which says) that, "The master's advice extends as far as

the gate, and as is the food so is the belly." The 5th of the first Aso Sud of Samvat 1916 (19th September 1860).

By the command of the holy Maharaj, Written by Vaishnav Gordhandas Gopalji. Printed at the *Chabook* Press, Bombay.

A true translation,
J. FLYNN, Chief Translator.
Supreme Court, Translator's Office,
19*th September* 1861.

Witness continued.—"Plaintiff complains therein of the carelessness of the Vaishnavas as to religious instruction, and of there being only 100 subscribers to his magazine, the "Propagator of our own Religion," out of a population of 12,000 Vaishnavas in Bombay. The bad company, alluded to in the hand-bill, are the "reformers." The person whose signature appears at the foot of the hand-bill is Goverdhandas, the plaintiff's secretary. The subscribers to the Magazine are chiefly of the lower class. The *Vaishnav Punch* is conducted by some Vaishnav, under the plaintiff's patronage; and was so until the 8th November 1860. (An article in a number of the *Vaishnav Punch* is put in as an exhibit.

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(22)—(Translation of portion of an Editorial article in a printed Gujarati newspaper published every Thursday entitled Vaishnav Punch" (i. e. the society of the Vaishnavas or followers of Vallabhacharya) dated the 8th of November 1860. No. 3 Vol. I. Page 10.)

Last Sunday at 7 o'clock in the evening the 'Vaishnav Dharm Prasarak Sabha' (i. e. the society for the propagation of the Vaishnav Religion) assembled in the mansion of Shri Chimanlaljee

Maharaj. On that occasion Shri Jadunathji Maharaj and Shri Gokuladhishji Maharaj and Shri Vithaleshji Maharaj presided, and Bhatji Jumkaji Lal Gordhanji and other members were present. After the proceedings of the last meeting had been read out, Vyas Jekisan Morarji delivered a speech as follows :—

* * *

"I intimated to the Vaishnavas before, that they should daily attend here, and have explained to them our religious books which are read every day. But the Vaishnavas have neglected to do so. Let that pass. Nevertheless I in my speech again intimate as follows :—It will be exceedingly well if all the Vaishnavas will come to this society which has been established. Behold for our sake Shri Jadunathji Maharaj having taken great pains in order that we may acquire a knowledge of (our) religion has arranged for the issue of a small book (i. e. a periodical) every month ; moreover he has established a society for the propagation of our religion still you are indifferent !"

A true translation,
J. FLYNN, Chief Translator.

Supreme Court, Translator's Office,
24th January 1862.

"Attempts were made to injure me, and to put me out of my caste, but without success, as the castemen were afraid lest I should institute an action of damages. The plaintiff and his agents asked the Vaishnavas not to subscribe to my periodical. One Kanjee told me so. These attempts were made before this action was filed. I received a notice of this action about the end of April 1861. I replied to that notice in the *Rast Goftar and Satya Prakash* of 5th May. It is the tyranny of the Maharajas which makes the

Vaishnavas obedient: they don't allow a man who has incurred their displeasure, to visit the temple. Visiting the temple once in a day is indispensable. I have seen Maharajas put their feet on the breasts of dying men, with the view of purifying them of sin. Rewards are paid for this, Rs. 5 to Rs. 1,000. A penalty is attached to the breach of the "Kanthee" vow. The general character of the Maharajas in my sect is "adulterous" and licentious. This plaintiff is known to be debaucherous. The consequence of the Maharaja's practices has been general debauchery in the sect; and great scandal and shamelessness prevail. The dedication or bowing of maidens to the Maharajas before marriage, has given occasion to these practices. The Maharaj is called, also, "one whose sole aim is amorous sport with women." Certain portions of the sect, the Marjadees, consider these practices as meritorious, and in no light worthy of blame. In addition to Marjadees, there are the "Varkuts," who are considered the most zealous of the Maharaja's followers. They generally act as procurers of women for the Maharajas. Every Varkut is necessarily a pilgrim: they form a distinct caste. The first thing in my studies, which arrested my attention, was the commentary of Goculnathji. The ten principles are explained in a Marathi book called "Kavi Charitra."

(23.)—(Translation of an extract marked C from a Marathi printed Book, page 96, entitled "Kavi Charitra" by Janardan Ramchandarji.)

Afterwards, Vallabhacharya having invited his tenets with those of that System* of religious

* The system described in the preceeding paragraph.

persuasion, set up a system of religious doctrines, called the Pushti-Marga. The ten articles of the principal rules thereof are as follows:—

1 To secure the firm support of the Acharya (spiritual guide.)
2 To worship Shri Krishna, is the only principal means of Mukti* (salvation.)
3 To forsake the sense of shame, with reference to the public opinion and the commandments of the Veds and Shastras, and to be supplicant to the Acharya for protection (or salvation.)
4 Humility towards God, and the Guru.†
5 To believe, that I am not a Purush (man) but a Gopi (female cowherd) of the Vrandavan.
6 To sing (or praise) always the virtues of the Goswami.†
7 To praise the greatness of the Goswami.
8 To obey the commands of the Guru.
9 To put faith on what Goswami may do or say.
10 The association with and the service of the Vaishnavas.‡

These are the principal doctrines of the system of Vallabha. He only, who conducts himself agreeably to these ten commandments, is the chief worshipper (or devotee); and he who conducts himself according to the shastras is the treader in the regulated path. Vallabhacharya established these principles. According to those (principles) the followers of the Pushti-marga are the only principal Vaishnavas (followers of Vishnu).

Besides this, there are strict words of command written in a work called the Sidhant Rahasya, to the effect that all things should be offered and presented to the Acharya, and that afterwards these things should be enjoyed.

(*Sanskrit verse quoted.*)

The substance of this verse—By those things being offered respectively, they are transformed into the nature of Brahma§ and (thereby) five kinds of sins do not attach themselves (to persons) by the enjoyment of them.

* The deliverance of the soul from the body, its exemption from further transmigration and its reabsorption into the divine essence.
† A title applied to Vallabhacharya and his successors.
‡ A title applied to the worshipper of Vishnu.
§ The divine essence.

(*Sanskrit verse quoted.*)

Goculnathji has given explicit exposition of the sin arising from not doing as described in this verse. It is as follows.

(*Sanskrit verse quoted.*)

To offer every thing means, that even our wives, sons, &c. should not be brought into our use without offering (or presenting) them. Regarding this, there are written down other dicta and their exposition.

(*Sanskrit verse quoted.*)

The substance of this verse is, that liberty is also given to the effect that lastly those, that may be incapable of performing this difficult act, should live (in the world) by considering themselves as (the property) of the Acharya. We have thus briefly described the constitution of the system of doctrines of Vallabh, and on his having gained a great number of disciples conducting themselves agreeably to his tenets, Krashnadev, Raja of Vidya Nuggar made a present to him of an image of seven maunds of gold equalling in weight his own body. With that wealth Vallabhacharya made ornaments for the image of Vithalnathji (and) paid off his father's debt and retained (the remainder) for (his) house expense. He disposed of it in this way.

A true translation,

NARAYAN DINANATH, Marathi Translator.

Supreme Court, Translator's Office, 11*th June* 1861.

"The Maharajas also promulgated a new set of doctrines called 'Pushti Marga.' (Mr. Anstey reads the principal doctrines of Vallabh, as illustrated by Goculnathjee). The Sidhant Rahsya is written by Vallabh, and his grandson Goculnathjee, has written a commentary on it. I had my doubts excited as to portions of the Commentary, which led me to studies and enquiries, the result of which

was, that I believe that these were the real doctrines of the sect. I announced in my paper the result of my studies as soon as I had satisfied my curiosity. I was aware that the females of my sect believed the Maharajas to be incarnations of Krishna, and as the "gopees" obtained salvation by falling in love with Krishna, that our females were bent upon adulterous love towards the Maharajas. But I did not know that such doctrines were contained in any of the sacred books of the sect, until I learned the fact from personal enquiries and research. The Maharaj is known by different names, such as Agni Svaroop, Acharya, Gosaiji, Vallabhcool &c. The Maharaj pretends to be, and is believed to be the personification of God. In respect to salvation of souls the Maharaj is superior to God, for it is said that when the Maharaj gets angry with any one, God cannot save him from the Maharaj's displeasure; but the Maharaj can save one from God's displeasure. To believe the Maharaj to be merely a Guru, is to be born again in the condition of an animal or bird called 'sichana.' The love enjoined to be cherished towards the Maharaj means adulterous love. These horrid opinions are held wherever members of the sect reside: they are not confined to Western India. They prevail at Benares. I caused a copy of this book to be procured from a press at Benares. I produce these papers as specimens of the attacks made upon the Maharajas previously to the publication of the alleged libel."

(These specimens of attacks, which were never noticed by the Maharajas, were tendered as exhibits. Mr. Bayley objected on the ground that newspapers could not be admitted in evidence, and that, for aught he knew, those newspapers might have been printed and published by these very defendants. Objection overruled.)

Witness to Court.—"These are hand-bills, newspapers, and pamphlets published from 1855-59. The purport of the attacks is similar to the purport of the libel, that is, that the Maharajas are adulterers. I saw and read these different publications as they came out. I am able to say that these publications were generaly circulated and read. I read and believed them to be true. To a certain extent they influenced my mind, but I was already convinced.

(24.)—The *Bombay Times*, 23rd August 1859.

"The deeds of the Maharajas are evil and so they love the darkness and not the light, and have resolved to resist to the death, the inevitable exposure of the witness box, which is sure to bring on them the detestation of the majority of the public, and must at last over-throw their influence even with their most benighted and bigoted devotees. It is not our purpose to describe their lives, their insatiable avarice, their greed of power, their insufferable pride, their grinding tyranny, and utter contempt of their people, and their abandoned profligacy; it suffices to tell the reader that they claim to be gods and we leave them to conceive how abhorrent and infamous must be their yoke."

(25.)—(Translation of portion of an editorial article in the *Bombay Samachar* a Gujarati newspaper of the 21st December 1855.)

TRUE REFORM.

We have (felt) much pleasure in learning and feel joy in announcing that several persons of the Hindu Community have resolved to be freed from the bondage of their religious preceptors, and in order to adopt a proper course for the purpose of

preventing the injuries occasioned to their characters and various interests by such bondage they have come to an agreement. It is as follows:—Many of the reputable and sensible people of the Bhatia caste held a special meeting among themselves, and after having consulted together agreed as follows:—"The authority which their Maharajas exercise over them is often improper and injurious and thereby their money is unnecessarily wasted and injury is occasioned to their (reputation for) intelligence, and a blemish is attached to the honorable—so of their families." These people have consequently determined that Hindus should as far as practicable, avoid taking the opinions of the Maharajas in any matter, and should not allow females after they come of age to go to the Maharajas mansions to perform their devotions.

* * * * * *

It is quite needless for us to say that unless they break down the present authority of their Maharajas they will afterwards repent, even more with regard to what they now greatly suffer in respect of money, manners, and the honour of their families.

(26.)—(Translation of a portion of an editorial article in the *Jam-e-Jamshed*; a Gujarati Newspaper of the 25th December 1855.)

" In this manner sensible and right thinking Hindus have seen their error though last, and have made fit and proper arrangements with respect to it. They have called a meeting of their own caste men and have arrived at this resolution: that in no case unconnected with matters of religion they should ask the opinion of their religious preceptors, as they on many occasions exercise over them improper authority and cause them to commit acts which reflect

shame on the reputation of their families, and that after a certain hour of the day, they should not permit their females to pay *Darshana* (divine honors) to their religious preceptors in their temples .....Thus very often they gave to their religious preceptors with great willingness permission to destroy the reputation of their families, and thought it an act of holiness sufficient to carry their progeny to the seventh generation in heaven. But all this folly has spontaneously now been made public.....The meaning of our words is simply this: that they should be backward in respecting the notoriously immoral, the honor-destroying and the unrighteous as well as improper commands of their preceptors of religion."

(27.)—(Translation of a portion of an editorial article in the *Samachar Darpan*, a Gujarati newspaper of the 29th November 1855.)

A very great discussion is going on now about the irregular conduct of the Maharajas of the Hindus, and many complaints of them are made to us. And we have received many communications too, and in them these is written something more than (what relates to) the irregular conduct of the Maharajas. Should a Maharaj not entertain the fear of God and walk in a crooked path and should he commit evil actions then it is certainly necessary to punish him . . . . . .

And according as the people shall improve the acts of the Maharajas will appear to them to be oppressive. And the Hindus will not regard the Maharajas oppressive acts as God's commands in the same way as they did before. Now their knowledge holds before them a torch by the light of which they emerge from darkness into light. Therefore they will not now approve the actions

of the Maharajas and they will not behold their families corrupted. The Maharaj is not god that they will fear him. The Maharaj also has been made by God and they also have been made by God. They will not therefore submit any longer to the Maharajas evil actions.

(28.)—(Translation of a portion of an editorial article in the *Bombay Chabook* a Gujarati newspaper of the 21st June 1859.)

According as education advances in India, according as we begin to reflect upon the savage conditions (of man) our minds begin to be exceedingly expanded. The cause of (our) saying this is as follows:—With regard to the Gosainjee Maharajas of the Vaishnavas here instead of their giving instructions as spiritual preceptors, these lords practise very licentious courses towards their devotees. This when viewed by a savage does not strike him at all, but when rightly regarded it appears to be very iniquitous behaviour. These Maharajas seem to these Hindus to be pure incarnations of the Deity but their actions are very base; and their intentions are full of sin and their conduct greatly transgresses all the rules of the world, and their religious practice appears to be contrary to religion. In this respect their own disciples expose their shortcomings.

(29.)—(Translation of a portion of an editorial article in the *Ap-akhtiar* (i. e. Independent) a Gujarati newspaper of the 22nd June 1859.)

In regard to the various deeds done by the Hindu Maharajas and how far they act contrary to the character of religious preceptors, there were carried many general discussions which the young

men have now begun to punish by means of books from which good consequences are expected to result.

It is proper to know the opinion which every one has been constrained to form with regard to the Maharajas of the Vaishnavas from (perusing) the small books which have appeared such as those entitled "Spiritual preceptors and famines." "The authority of spiritual preceptors and licentious preceptors." The mansion of the Hindu Maharaj is a brothel, his hall is the abode of procuress (women) fallen (from virtue) without reputation, the aspect of his eyes is that of gay lasciviousness, the members of his body are the tenements of evil passions, every particle of his person is replete with unholiness, uncleanliness impurity, and in short instead of being as they are held to be incarnations of God, the Maharajas, have been found to be incarnations of fiends possessed of the qualities and dispositions of demons and (of) satan.

(30.)—(Translation of an extract from an article in a Marathi newspaper called the *Vritsar* of the 15th August 1859.)

Should a katha,* or instructions in, religion be given in the Mandir† of a maharaj, or should a nautch‡ of a courtesan take place (there)? Is it worthy of a Maharaj to give encouragement to courtesans? Because one Maharaj has performed such an unworthy act in his own Mandir should not another Maharaj§ question‖ (him)? We recommend the Vaishnav community to consider those questions. It is necessary for them to direct their attention to those questions. They should direct (their) attention to the present state

* Hindu religious preaching. † Temple. ‡ Dance.
§ High priest. ‖ Or bring him to an account.

of the Maharajas. They should make their Maharajas act in a proper way. The Maharajas act just as they think (proper). This should be put a stop to at once. If the Gujarati community direct (their) attention in a proper manner, towards the conduct of their Maharajas their spiritual guides will conduct themselves according to their religion. Should any Maharaj not conduct himself properly, he should be turned out of his Office.

(31.)—(Translation of a passage at page 13 of a printed Gujarati book entitled "A Treatise concerning Licentious Spiritul Preceptors.")

In the mansions of the Maharajas there are several attendants and whippers, Sachora (Brahmans) female servants, and other people who are employed by the Maharajas to procure other people's wives. Although the wives of the Maharajas are not for the most part very beautiful, yet they keep them in privacy.* In the service of those wives there are several widows and married women. By means of such men or women appointed for those iniquitous deeds the Maharajas send for and have brought, at the same time or later, (the females) who may have been selected from amongst those who come to perform their devotions. As for the various wanton women who are acquainted with the blandishments of love, they are called by the Maharajas winking at them. When called by a Maharaj they consider themselves called by Shri Krishna and as having attained the highest rank, and they quickly go and filled with joy, and all confused, view the Maharajas private parts and receive favours. Sometimes

* i. e. concealed from the public gaze.

the sturdy fat Brahmin domestics—the attendants and the whippers dine first and cause the Maharajas to eat their leavings. And in committing these deeds they* (the Maharajas) do not have intercourse with women suitable to their age, but those bulls exert their strength upon poor tender innocent girls not of age.

(32.)—(Translation of a portion of a Gujarati book of poetry entitled "Whips for the Hindu Maharajas.)

I have witnessed the deception of the Maharajas ;
Now women let none (of you) go to the (Maharajas) Mansions.
Chorus

1. Sending for females of tender age
They give them sweetmeats as tokens of favour.
Showing them (as) examples (the action, &c.) of Kan † and the Gopis. ‡
They cause Kamdev§ to make his advances ; I have (&c.)
2. If they see money, they affectionately call (us)
If not they cannot bear to see (us)
They rob other people's wives of their wealth and youth.
Behold the virtue of the spiritual guides ; I have (&c.)
3. In the season of spring they fill their syringes¶
And taking aim at, they wet the breasts (of females)
Without regarding the modesty of those standing near
Whether aunts or mother be looking on ; I have (&c.)
4. Chewing rolls of betel leaves
They spit after eating the betelnut
Their spittle they make others swallow.
Behold what rascality this is, I have (&c.)

(33.)—(Translation of a portion of a printed Gujarati handbill printed at the *Daftar Askárá Press in* 1855.)

Gentle readers, do you attend. Behold ! how the banners of the Mahárája's good conduct and

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* The pronoun they may either refer to the Brahman domestics, &c. or to the Maharajas. † i. e. the Hindu deity Kanaiya or Krishna.
‡ Females of the Cowherd caste in which Krishna was brought up.
§ The name of the Hindu cupid or god of love.
¶ This alludes to a practice at the Holi festival when persons amuse themselves by filling syringes squirts with a yellow fluid and discharging them at one another.

understanding, are flying. And he writes. "As for coming to the meeting, it is not my custom at all." Behold then! O behold! does he write correctly when he writes that it is not his custom to go to a Brahmasabhá (a metting of Bráhmans.) For, on receiving invitations to prostitutes' dances he always attends them with pleasure.

Witness continued:—"These are only some attacks amongst many. I know what the "slavery bond" was. The temples were closed for a week to force parties to sign the bond, and the person signing it bound himself not to write anything against the Maharajas, nor attempt to procure his attendance at the Supreme Court. One of its objects was to excommunicate me, in which they failed. The bond is still binding, and I have read in it that persons not obeying it shall be guilty of a crime against religion. I have seen the females bow to the Maharajas, at the time of worship in the temples, and I have seen the Maharajas touch the toes of females of whom they are fond. Touching the toe is indicative of a desire for carnal intercourse. The females go into the zenana, and the Maharajas go after them. 'I have seen the managers of the Maharajas giving water to Vaishnavas to drink, the water which fell from the Maharaja's "lungotee." I have seen the leavings of the Maharaja's food eaten by some Vaishnavas. When the Maharaj walks on foo, males and females follow him in the streets. I have seen the "Ten Principles" in two other books, one in verse and the other in prose.

Ninth Day, Friday, 7th February, 1862.

(Mr. Spencer Compton read English translations of passages from the sacred books of the

Vallabhacharya sect, which were put in as exhibits the previous day. These passages support the pleas set forth by the defendants, and allude to the horrible doctrines of the sect as mentioned therein.

Karsandas Mooljee, cross-examined by Mr. Bayley.—"I first became acquainted with the plaintiff in the year 1860, but have never been in his company, nor even spoken to him in my life. He has no temple in Bombay. Maharajas having no temples of their own, go to the temples belonging to other Maharajas. I have no ocular knowledge of any improprieties committed by plaintiff, but have had in respect to others, when I used to visit the temples about ten or eleven years ago. I have observed the improprieties of Jeewanjee, the head Maharaj. I have not been to the temples, I believe, since 1848, because I knew that the Maharaja's conduct was blameworthy. I mean improprieties to the extent of pressing the toes of females by Jeewanjee Maharaj. I went once a week every Sunday, to Jeewanjee's temple. The temple consists of two parts, and I have seen both, I saw the toes of the females pressed three or four times when I myself went to touch the Maharaja's toes. I did not mark this when I was young, that is, under fifteen. This circumstance, combined with their general reputation as regards adultery, made me secede from the Maharajas. Jeewanjee is still my guru but I have stopped visiting him. I have a daughter round whose neck I put a "kanthee" myself according to the ceremonial forms of my sect. Many Vaishnavas have put "kanthees" with their own hands round the necks of their children. There may be two hundred reformers among the Vaishnavas at the utmost. When I say all the Maharajas

have carnal intercourse with the daughters and wives of their devotees, and that maidens are first sent to the Maharajas after their marriage, I say so from general reputation. Besides pressing the toes, I have seen the Maharajas throwing gulal on the breasts of females during the Holee festival in different years, when all the men and women were in the temple. It was gulal which had been offered to the idol, and is considered holy by the people. The gulal was sometimes thrown in balls, which were pointedly thrown at the breasts of females. I received spiritual instruction from the Maharaj once in my life when the "kanthee" was put round my neck. These sacred books are the property of two of my friends and of Ramlall Thackorseydas. I found out the particular passages with the assistance of one Mathooradass. I was acquainted with these passages before the time of the alleged libel. I said there are about a hundred sects in India, but I don't think the old religion is represented by any one sect at present. Some of the sects follow the old religion more or less. The Vallabhacharya sect professes to follow the old religion, but I am not certain whether it does. It differs widely in its doctrines from those of the old religion, and conceives itself to be far superior to all other sects. The number of the Vallabhacharyas in Bombay may be thirty or forty thousands; they extend from here to the Ganges and to Agra, but not uninterruptedly. I heard six or seven years ago that the Maharajas were excommunicated by the Telinga Brahmins. I think it is the general belief in the sect that Vallabh was a Telinga Brahmin and was outcasted. Telinga is a province in the Madras Presidency. The Telinga Brahmins form a large body in Telinga as in other parts of India, and are the worshippers of Shiva. They are like any other Brahmins in any other part of

India. The Vaishnavas and the Shaivas are "at daggers drawn." Luxmon Bhatt, the father of Vallabh, was excommunicated by his own castemen for founding a new creed. Manu and other books are considered to be of divine origin. The story of the "gopees" and the incarnations of Vishnoo are believed in by several sects, but are opposed to the ancient religion. The Shaivites believe in the incarnations of Vishnoo equally with the Vaishnavas. As far as I have read, all the sacred books do not contain amorous passages. I am not aware whether Sir William Jones has said that "Krishna is to this day the darling god of Hindu women." I have heard the story of Brahma coming out of an egg after remaining three millions and millions of years. I do not believe in the modern stories in books which are written after the Veds, which I have not read. The stories are considered by most Vaishnavas as literally true. I was not present at any of the "Ras festivals;" it is a matter of general reputation, and is described by Captain McMurdo of Cutch, in his work, on that province. Adultery is considered a crime whether committed by a "Gosai," or any other person. The instruction which Vaishnavas receive from the Maharaj is only once in their life-time when the "kanthee" is put round the neck. In certain respects the Maharajas are regarded as religious preceptors, but they don't teach more than once in a person's life-time. Each family has its priest, who gives instruction in religion. The plaintiff is not a Brahmin of high caste; he is an outcasted Brahmin, and no high-caste Brahmin would dine with him or the other Maharajas under the penalty of being ex-communicated. I collected and printed the licentious songs sung by females when the Maharajas are invited to their houses. I have heard the songs sung within the last year or two.

I heard them sung. They are sung generally among the sect. What I printed are not the exact words, but the substance of the songs, which I got printed for the purposes of this trial. There are many other songs of similar tendency; these are mere specimens. The Brahmins are highly respected; they are not divine. The "amorous Kann" plainly means the Maharaj; he is generally regarded as God, the Supreme Being himself. It is not possible that I can be mistaken as to the construction of the words "*tan, man,* and *dhan.*" "Dhan" means property, but the Vaishnavas have extended the sense. I differ with the Chief Translator as to the translation of the latter portion of the libel. The word "*bigado chho*" simply means "defile," but from the context it is a participle and not an active verb. I had nothing to do with the article which appeard in the *Sammachar*: its editor was a Parsee. I had nothing to do with any of the articles which appeard in other journals against the Maharajas. I don't know who wrote the article against the Maharajas in the *Bombay Times*. I have seen Maharajas follow females into their private rooms,—not the females of their own family, who are not allowed to be seen by strangers. Plaintiff pretended for some time to be a reformer. I have not read Gokulnathjee's commentary in the original, *i. e.* the Sanskrit. I did not intend to convey any reflections against the plaintiff, but against the body of Maharajas. I have had no personal knowledge of the adulteries of plaintiff: it was a matter of notoriety that he committed a rape at Surat. I heard from a friend that plaintiff suffered last year from the venereal disease.

Mr. Bayley.—Who is your friend?

Mr. Anstey applied that the witness might

not be compelled to give up the name, as, from the fact of so many "bundobusts" having been made against the defendant by order of the Maharaj, it was to be presumed that if the name were revealed, the witness would be exposed to importunities and manaces, and thus justice would be defeated.

Mr. Bayley objected on the ground that he had a very good reason for asking the name, and that the Court cannot extend the rules of evidence in defendant's favour.

Mr. Anstey repeated that justice would be defeated if the name were given up, and begged the Court, in the exercise of its discretion, to obviate the mischief by a special order in this case, which, he maintained, had no parallel in the constitutional history of England; and the special order might well be made.

The Court decided that to obviate inconvenience to the defendant, the name of the party who had a personel knowledge of the fact, must not be exposed; but that the name of the friend who conveyed the information to defendant, might be given without much inconvenience.

Mr. Bayley.—Who is your friend that informed you?

Witness to Court.—"Am I bound to answer that question, my Lords?

Sir M. Sausse.—Yes, answer it.

Witness continued.—"Lukmidas Khimjee is the name of the friend. I know nothing of this, of my personal knowledge.

To Sir M. Sausse.—The females go to the zenana, the place for the Maharaja's family. They go to the zenana, and then into the Maharaj's bedroom. The zenana has more than one room; but

I don't know of my personal knowledge. At the time I wrote the article, I believed that the Maharajas did defile their female devotees.

Re-examined by Mr. Anstey.—"None of the sects does in itself represent the ancient Hindu religion. The adulteries of the Maharajas are a matter of notoriety. Captain McMurdo has written on their adulteries and on the "Ras festival," in the volume 2nd of the "Transaction of the Literary Society of Bombay," published in the year 1820. He says :—

" The Bhattias are of Sindh origin. They are 'the most numerous and wealthy merchants in 'the country, and worship the Gosainjee Maharaj, 'of whom there are many. The Maharaj is master 'of their property and disposes of it as he pleases; 'and such is the veneration in which he is held, 'that the most respectable families consider themselves honoured by his cohabiting with their 'wives or daughters. The principal Maharaj 'at present on this side of India is named Gopinathjee, a man worn to a skeleton and shaking 'like a leaf from debauchery of every kind, excepting spirituous liquors. He is constantly in a 'state of intoxication from opium, and various 'other stimulants which the ingenuity of the 'sensual has discovered. He is originally a Brahmin. . . . The well-known *Ras Mandalees* 'are very frequent among them (the Bhattias) as 'among other followers of Vishnoo. At these, 'persons of both sexes and all description, high and 'low, meet together, and, under the name and 'sanction of religion, practise every kind of 'licentiousness.' (Witness here defines the grammatical construction of the passage containing the libel,—'You Maharaj!' &c.) I am sure that the songs I have printed give exactly the substance

of what I have heard women sing. Maharajas are sometimes called by the name of "Purshottam," God or "excellent Being." or "Poorna Purshottam," perfect God, or perfect excellent Being."

Tenth Day, Saturday, 8th February, 1862.

(2.)—*Dr. John Wilson,* examined by Mr. Anstey.—"I am an ordained minister of the Free Church of Scotland, and a graduate of the University of Edinburgh. I came out to this country in 1829. My professional duties as a missionary led me to the study of some of the eastern languages: I know the Sanskrit, the Zend, and to a certain extent the Pehlvi. I have some acquaintance with the Prakrit languages and the Brij Bhasha, in both its forms, I have presided at the examinations in languages of gentlemen of the Services. I was offered the office of Translator to Government, but declined it. I am a member of the Royal Society of Great Britain and Ireland, and a member of the Bombay Branch of the Royal Asiatic Society. For seven years I was its president, and since 1842 have been its honorary president. I am a corresponding member of several Socities in Europe. I am the author of certain works of the ancient Hindu religious systems, and have prosecuted studies in the literature of the East. I commenced such of my studies in the University of Edinburgh, and prosecuted them on my arrival in this country. I have heard the evidence of the witness in this case up to yesterday; but I was absent yesterday. There is one sacred book of the Hindus called the Vishnoo Puran, a philosophical and legendary treatise dedicated to the exposition of views respecting Vishnoo. I have read it in the original Sanskrit as well as translations of it. The most ancient books of the

Hindus are the Veds. They are what is called "Srootee," *i. e.*, what is heard. They are believed to be the works of divine revelation in the highest sense ef the word. The Vishnu Puran belongs to a later period and is considered as authoritative revelation by a large body of the Hindus. The Institutes of Manu are believed to have been written two centuries before the Chritian era; the Veds about three thousand years before the Christian era. The law books belong to the "Smriti," *i. e.*, what is recollected. The literature of the Hindus shows great changes of religious belief and practice. It is an historical fact, that the more modern religions are less moral and less pure. Very great changes have occurred in India with reference to the gods, postively for the worse, as admitted by the Hindus themselves. Vallabhacharya flourished from the end of the 15th to the beginning of the 16th century. I have read that Vallabh visited the King of Vizianaggar about the year 1500 or 1504, and I found from the genealogies of the kings of that place, that the King was Krishna Deva; and that Vallabh received a large present of gold from him. (Witness refers to an ancient Sanscrit drama he held in his hand.) The dramatist distinctly alludes to the existence of the sect of Vallabhacharyas. (Witness was about to refer to the contents of the drama, to which Mr. Bayley objected.)

Witness to Sir M. Sausse.—"I have not found any reference to the drama in the sacred books of the sect. I don't know if it has ever been acted; but it is the custom of the Brahmins to compose dramas and circulate them among their friends.

The Court upheld the objection, on the ground that the drama was not a professional treatise, and

could not be recognised as an historical authority as to the tenets of the sect.

Witness continued.— "My object in referring to the drama was to show the existence of the sect and its aspects to certain classes of India.

Sir M. Sausse.—The aspects of the sect to other classes are not pertinent to the matter at issue.

Mr. Anstey asked the Court to take a note of his argument, that the witness could not be prevented from referring to the document. (Note taken accordingly.)

Witness proceeded to say.—"I have seen notices of the sect by Captain McMurdo, Resident at Cutch, in papers communicated to the Asiatic Society of Bombay; and in the 16th volume of the Transactions of the Asiatic Society of Bengal, in which the origin and doctrines of the sect are set forth by Dr. Horace Hayman Wilson, for some time the secretary of the Society.

'Amongst other article of the new creed, Vallabha introduced one, which is rather singular for a Hindu religious innovator or reformer; he taught, that privation formed no part of sanctity, and that it was the duty of the teachers and his disciples to worship their deity, not in nudity and hunger, but in costly apparel and choice food, not in solitude and mortification, but in the pleasures of society and the enjoyment of the world. The *Gosains* or teachers, are almost always family men, as was the founder Vallabha, for after he had taken off the restrictions of the monastic order to which he originally belonged, he married by the particular order, it is said, of his new god. The *Gosains* are always clothed with the best raiment, and fed with daintiest viands by their followers, over whom they have unlimited influence; part of

the connection between the *Guru* and teacher, being the three-fold *Samarpan* or consigment of *Tan*, *Man* and *Dhan*, body, mind and wealth, to the spiritual guide.

* * * * * *

'The most celebrated of all the Gosain establishments is at *Shri Nath Dwar* in Ajmer. The image at this shrine is said to have transported itself thither from *Mathura* when Aurangzeb ordered the temple which contained it to be destroyed. The present shrine is modern, but richly endowed, and the high priest a descent of Gokulnath, is a man of great wealth and importance. It is a matter of obligation with the members of this seet to visit *Shri Nath Dwar*, at least once in thair lives; they receive there a certificate to that effect, issued by the head Gosain and in return, contribute according to their means to the enriching of the establishment.'

'It is not an uncurious feature in the notions of this sect, that all the veneration paid to their Gosains is paid solely to their descent, and unconnected with any idea of their sanctity or learning; they are not unfrequently destitute of all pretensions to individual respectability, but they not the less enjoy the homage of their followers.'

To Sir M. Sausse.—From my study of the doctrines of the sect I am of opinion with with Dr. Hayman Wilson that the sect is impure. I agree with what Dr. Hayman Wilson states. (Witness reads the parts in which he agrees with Dr. H. H. Wilson.) Vallabh taught that the Deity should be worshipped in choice food and costly apparel, not in solitude but in the enjoyment of society. The Gosains have unlimited influence over their followers, who consign to them

their "tan, man, and dhan." (An account is next given of the services of the image, in which witness agreed with Dr. H. H. Wilson.) The homage paid to the Gosains is paid to their *descent*, not their sanctity or individual accomplishments. The most ignorant Gosains is revered by his followers.

To Mr. Anstey.—"The drama I have referred to, is a faithful mirror of the doctrines and practices of the sect as they prevail at the present day. I could not give a more faithful picture, than by reading one of the passages which I have translated into English. The conductor of the play says to one of the actors:—

"The Veds have fled; lovely damsels now 'look to the gratification of sense with the descendants of Vallabh; the descendant of Vallabh 'is the kisser of females; he feels lust at every 'step for his large-eyed damsels. Offering one's-'self and one's wives and daughters to the Gurus 'is in this world the only course of salvation. 'Carnal intercourse with females, dining and 'playing with them, is one of the principal offices 'of Krishna. The nectarine pleasure of Shree 'Gokul (Krishna) is better than a thousand other 'expedients. If copulation does not take place 'with Krishna, the existence of the paramour of 'man is worse than that of a worm.' (The 'passage, of which the above is the substance, 'is put on the record.)

The sect of the Vallabhacharyas is a new sect, inasmuch as it has selected Krishna in the aspect of his adolescence and praised him to supremacy in that aspect. The sect is new in its objects and new in its method. The god Krishna is worshipped in the shape of images and the Maharajas; both are believed to be personifications

of Krishna. The Maharaj is considered as an incarnation of God; he is God incarnate according to Hindu notions, which are peculiar in this respect. There have occurred nine incarnations of Vishnu, the last of which was that of Boodh. The Hindus do not believe in any incarnations which have taken place between the time of Boodh and the present day; the Vallabhacharyas, on the contrary, hold that Vallabh and his descendants are incarnations of Krishna. They view the Maharajas as intermediate between themselves and the God Krishna; in the sense of receiving his dicta as equal to Krishna himself. As between the angay God and the sectary, the Maharaj is the mediator; as between the Maharaj and the sectary there is no mediator. There are multitudes who believe the Maharajas not only as Gurus, but also in the light above represented. The Maharajas are certainly not the preceptors of what is technically denominated the Hindu religion. They are not chiefs or heads of any single sect of Brahmins. The descendants of Vallabh are considered as outcasted Telinga Brahmins. To my knowledge there is no intercourse between the Maharajas and the Telinga Brahmins. According to the belief and practices of the Hindu religion, it is not possible for Brahmins to hold such intercourse with the Maharajas as members of one caste hold with each other. 'Tan, man, and dhan' are used in an all-comprehensive sense: 'tan' embracing body in all its relations; and 'man' referring to mind in all its mental faculties and qualities which are to be placed at the disposal of the Maharaj according to the doctrines of the sect. With referance to the third word 'dhan," I have seen passages published by the authority of the Maharajas, in which it is stated that the sectaries should make over to the Maharaj their

sons, wives, daughters, and every thing else before applying these things to their own use. (Witness reads the translation of a passage from the commentary of Gokulnathjee). In regard to the Brahamin, it is said in the Bhagwat Gita that his qualities are quiescence, self-control, patience, rectitude, the resignation of spiritual existence, &c. The sense of shame and public opinion are outraged by the doctrines of the Vallabhacharyas. There is no sense of shame in the doctorines of the sect. I have heard that the translation of the passage containing the alleged libel has been disputed. I consider that the passage should be read as:—'Ye Maharajas! when you act according to that commentary, or upon your acting according to your commentary, you corrupt the wives and daughters of your devotees, lift your hand' (desist.) The passage is capable of the interpretation given by the defendant. The meaning to my mind, is that it is a mild expostulation on the principle. I do not think that, in the passage, the plaintiff and other Maharajas are *necessarily* meant; it is probably a general and inferential proposition. (Witness reads the translation by himself of a Sanskrit paper, in which a sectary says to Krishna:—"I consecrate to thee, my life, my soul, my organs, my property, myself, &c. I am thy slave, Oh Krishna!"

Translation of the original Sanscrit Text.

Shri Krishna is my protector!

Om,* I, who am eternally destroyed by misery and pain produced by (my) separation from Krishna, during a time measured by thousands of years, do surrender to the all-furnished† Krishna,

* *Om* is a mystic term used at the beginning of all religious formulas as well as invocations, prayers, &c.

† *All* refers to *powers*, *qualities* and things: *all-furnished* is an epithet commonly given to the deity.

(my) body, senses, (or organs), breath, heart (as the seat of feelings), its feelings, as also (my) wife, house, children, relatives, wealth, and other wordly things, together with (my) soul. Oh you Krishna, I am your servant.

Cross-examined by Mr. Bayley.—" The passage containing the alleged libel is ambiguous, and the composition is loose. I think the Bhattias, who read it, would see the connection between it and the commentary. I am not prepared to state that Mr. Flynn's translation is incorrect, but it might be improved. I have taken no active part in the getting up of the case, except that I take an interest in it. I did not know the defendant personally before the action was brought. I have not been in any of the Maharaj's temples. I have no personal knowledge of the improper practices of the Maharajas, but have heard a good deal from his followers. From the books I conclude that the Maharaj and the idol are worshipped as gods. I do not think that the Hindus worship cows and bulls; they believe that the Deity is present every where and in everything, and, philosophically, they believe every thing to emanate from the God-head. The books of Vallabhacharya are read by portions of the sect. Sir William Jones thought that the time of the Manu was about the date of Christ.

To Sir Joseph Arnould.—" I would not call the Mormonites a sect of Christians. The Vallabhacharya sect forms only a portion of the Hindu religion.

To Sir M. Sausse.—"I cannot say that any sect at present strictly follows the ancient Hindu religion.

Witness proceeded to say.—" I know of a sect that holds doctrines similar to those of the Vallabhacharya sect. This book (one of the

exhibits) appears to me to have been published by order of one of the Maharajas. There is no date to it; I have come across it in my researches. It appears to have been printed and circulated in Bombay, but I cannot say to what extent. The word 'vishaya' is not equivalent to the word adultery. The caste to which the Maharajas should belong is the Telinga Brahmin. The third or fourth in descent of the Vallabhacharya sect, I believe, is still alive in Ahmedabad, but I have not seen him personally. There are a number of sects in various parts of India of as recent origin as the Vallabhacharya sect. The words 'tan, man and dhan' have nothing peculiar in their original meaning, which has been extended by the Maharajas. The intelligent portion of the Hindu community are making great researches in their old writings. I have read some of the works of the plaintiff and formed a very low estimate of them.

Re-examined by Mr. Anstey.—"I have seen some very obscene conduct on the part of the Maharajas, I have turned away from it in disgust. I should have been pleased to have seen a better state of things in this country. The passages in question were brought to my notice by parties engaged in the defence, but I was acquainted with them before.

To the Court.—"The meaning of the words "ras lila" is amorous sport; the meaning of "ras" alone might be rendered as the "juices of fruit or of the body." The Maharajas in a general point of view might be looked upon as preceptors, but not as preceptors of the Hindu religion."

Eleventh Day, Monday, 11th February, 1882.

(3.)—*Balajee Pandurang*, examined by Mr. Dunbar.—"I am one of the Translators and Interpreters of this Court. I have rendered into English this passage (in exhibit) in the Brij Bhasha. (Witness deposes to having translated into English several other passages referred to and put in as exhibits.)

Cross-examined by Mr. Scoble.—"There is a dictionary of the Brij Bhasha language, printed at the Calcutta School-book Society's Press, for the use of schools, to which I referred for the meaning of some words. The Brij Bhasha is a composite language containing some Sanscrit and some Hindu words, and some no doubt other dialects. In making the translations, I looked more to the meaning of the analogous than to the meaning of the words themselves. I have never scientifically studied the Brij Bhasha language as a language. I have read some songs in Brij Bhasha. In the translations I confined myself to the passages I had to translate. "Rassik Shiromani' literally means 'the head jewel of humour:' the words mean either intellectual, æsthetic, or sensual pleasure. "Vehvichar bhav" means adulterine, not adoptive, love; the first word literally means admixture, confusion. The words are always used in a bad sense; they cannot be translated as 'exceptional or deviating love.' 'Soorat Aranya' means a forest where sport is carried on between men and women; the first word does not mean beauty.

Re-examined by Mr. Anstey.—"I have carefully studied the passages I have translated, and have no doubt as to the meanings I have given. 'Vehvichar,' in its primary sense, means admixture; and in its secondary sense, adultery."

(4.)—*Vinayak Laxman Shastree,* examined by Mr. Anstey.—"I am a Brahmin, and Government Shastree at the Sudder Adawlut, I come from the Konkun. The report is that the Maharajas are Brahmins, and I consider them as Brahmins. I might sit with them, but would not dine with them. I cannot give the reason, but that has been the practice for several years, probably from their having connection with the Gujaratee people. They have a good number of followers, but thy are not the chiefs or heads of any persons but the Vallabhacharyas. I know the Sanscrit language, and have seen and read some of the sacred books. All religious sects of the Hindus are derived from the ancient religion, and profess to be guided by its principles and cannot therefore be said to differ from the ancient religion. Each sect says that it follows the ancient religion. I don't think that the Vallabhacharya sect deviates from the ancient religion ; but there may be some slight difference. It is a sin almost equal to adultery for a person to handle the breast of another's wife:"

The witness was not cross-examined for the plaintiff.

(5)—*Vishvanath Narayan,* examined by Mr. Dunbar—"I am superintendent of the Special Income Tax Commissioner's Office and a member of the Bombay Branch of the Royal Asiatic Society. I hold the substantive appointment of Curator of the Government Central Book Depot and Deputy Inspector of Marathee Schools. I have translated Elphinstone's History of India into Marathee. I am one of the Konkani Brahmins, and am acquainted with Sanscrit. I have read some of the ancient books of the Hindus. We have no intercourse with the Maharajas as Brahmins ; we don't intermarry or dine with them;

because, as Brahmins, we have duties to perform, and to my knowledge the Maharajas don't perform those duties. They are not preceptors of religion to all Hindus. I am not acquainted with their caste as Brahmins. Every Brahmin, according to our laws as laid down in Manu, has to perform six duties:—sacrificing and assisting at sacrifices; teaching the Veds, which the Maharajas don't teach to my knowledge, &c. These are two out of the principal six which are neglected by the Maharajas. I have looked at some of the books of the Vallabhacharya sect. (Witness refers to passages in some of the exhibits.) The Maharaj is in this passage described as the lord, the husband of many women; as one whose only object is wanton sport with many women and the ocean of wanton sport with many women. One of the books contains 108 names for the Maharaj, and he is described there as equal to the Supreme Being. I don't think that the Vallabhacharya sect follows the religion of Manu, the most ancient religion of the Hindus. My caste, are bound to follow that religion, and they follow it. I don't think the Brahmins regard the Maharajas as models of morality at all. They have no authority in the Brahmin caste at all, so far as my caste is concerned. The Morality of the Maharajas was made the subject of comment in some of the Marathee newspapers of Bombay. To my knowledge the chastity and morality of the Maharajas are very low. Others have also a low opinion of them.

Cross-examined by Mr. Bayley.—"I have seen the plaintiff once at his house in Bombay. I may have seen other Maharajas on the roads. Once in Bombay, in the year 1858–59, I saw a Maharaj do an improper act, unworthy of his assumed character of a spiritual preceptor. There were two persons

sitting in a moveable swing among a crowd of males and females, and the Maharajas (I think both of them were Maharajas) threw gulal indiscriminately upon all. The gulal is not thrown only during the Holee holidays. I do not recognise the Bombay Almanac as a book of religious authority. I considered it an act of immorality for men and women to mix together purposely, and for the Maharajas to throw gulal upon the females. It was not an accidental crowd: the men and women met purposely on the occasion. I consider the book of Manu as binding so far as it is consonant with the Veds. I have been in Sind, out of the Bombay Presidency, and in Kathiawad and Gujarat. Gosainjee and Maharaj are considered as convertible terms. Gosain commonly means a man clad in reddish-coloured clothes. A preceptor of religion must be a Brahmin; and I cannot say if the Maharajas are preceptors of religion. I have not heard that the Konkanee Brahmins are looked down upon by the Gujarati Brahmins. The fact is the other way. We dine with the Telinga Brahmins, but not with the Maharajas, I have read the whole of Goculnathjee's commentary in the Sanscrit. I don't recollect any particular passage; I recollect the general impression is left upon my mind. The translation of the passage in the alleged libel from the commentary, is not so exact as mine, but I cannot say that it is a garbled translation. There is no mention of the Maharaja's name in the original: The original passage is in the passive voice, but the agent is understood. The word "Surat" in Sanscrit implies carnal intercourse. I know Gujarati. The word "Surat" means a face, contenance, in the Hindoostani. It would have the same meaning in Gujarati according to the context. I know the defendant for the last two or three years and have

taken an interest in the case as one of the public only.

Re-examined by Mr. Anstey.—"The proper meaning of the word "reform" is bettering, and in that sense I am a reformer, and wish to see the religion restored to its pristine purity. I have heard the Maharaj called "Purushottam," *i. e.*, best of beings. This word in the commentary applies to the Maharaj. Goculnathjee's commentary is considered a book of religion. (The Marathi translation of the commentary is put into witness's hand.) I find a passage in the book referring to "Acharya," commanding that all things should be in the first instance offered to him before being tasted or enjoyed by any other person. From what I have seen and heard, I don't think the plaintiff and other Maharajas specially qualified to be spiritual preceptors. From the conversation I had with the plaintiff, I did not think he was a man of learning, and as such, qualified to be a preceptor. I take no interest in this case beyond what is felt in it by hundreds of the public. (Refers again to a passage in the commentary.) The subject of my conversation with the plaintiff, was the female schools and the meaning of one or two verses from the "Bhagwat Gita."

To Sir M. Sausse.—"Every Brahmin is bound to be a preceptor; if he is not so qualified, he is obliged to undergo a certain penance. Among the general class of Hindus, every Brahmin is looked upon as a preceptor, whether he gives precepts or not."

(6.) *Jhaverilal Umiashanker*, examined by Mr. Dunbar.—I was lately one of the Duxina-fellows of the Elphinstone College. I know Sanscrit. (Refers to one of the translations put in as an

exhibit.) I made the translation of the Sanscrit passage.

Cross-examined by Mr. Bayley.—"The word 'Purushottam' to whom that translation refers, is the Supreme Being, and the offerings referred to are made to him.

Re-examined by Mr. Anstey.—I have read the passage only, not the entire book; nor the commentary of Goculnathjee upon the passage."

(7)—*Nanabhai Haridas*, examined by Mr. Anstey.—"I am one of the Translators of this Court, and have made some translations of books in the Brij Bhasha language. (specifies the translations.)

To Mr. Baylay.—There are many works in the Brij Bhasha in manuscripts. Most of the Maharaja's works are in that language. Generally manuscripts don't contain dates. In this instance I have collated two manuscripts and the dates each bore were different. These books are read by Banias who read the Balbodh character. I have read portions of them. I am a "Kayasth," a word derived from Kaya," the body. The Kayasths are followers of the Maharajas. They are respected by their followers and such Brahmins as receive alms from the Maharajas.

To Mr. Anstey.—I find one of the books composed by Vallabhacharya. The Maharajas are reputed to be outcaste Telinga Brahmins. A Brahmin out of caste would not be reputed to be a preceptor of religion among learned Brahmins. I don't know what common Brahmins might think. There are some Brahmin followers of the Maharajas."

(8.)—*Narayan Dinanathjee*, examined by Mr. Dunbar.—"I am one of the Translators and

Interpreters of this Court, and remember to have translated some of the documents in this case. (specifies them.)

Witness to Mr. Bayley.—I did not read the books before they were put into my hand for translation. I visit one Maharaj Jeewanjee, as a friend; he is considered the head man. I have visited his temple perhaps two or three times a year, during the last ten or twelve years, I have not seen any improprieties in his temple. I have not been there during the Holee, and have not seen any gulal thrown. There are certain occasions on which gulal is thrown; the Holee is one of them. There is no impropriety in the act itself. I have not seen Jeewanjee throw any gulal at all any time. I never went there to see the idol or the worshippers. Gurus are worshipped by all sects throughout Indla; and all sects have Gurus. The form of worship is always the same; they are not worshipped as gods. There are in my caste both Vaishnavas and Shivites; but none of them are followers of the Maharajas. I have read the commentary of Goculnathjee since this action was filed. My attention was particularly called to the word "Purushottam" therein, and I remarked that it applied to Purushottam (God) alone. The word Acharya (Guru) occurs in one place. And it is stated that the dedication ought to be made to Purushottam through the Acharya. It is very difficult to say what the word "Surat" means; it means—"su," good; and "rat," attached. I am not positive, I guess merely. I am not prepared to say whether or not it means carnal intercourse. As to the name of the town, Surat, it means "Surat," good town. According to my views there is nothing improper in the dedication

of "tan, man, and dhan" (to God). It is enjoined in all sects. As to the 'Ras lila' I would derive the word from "râs," an assemblage; not "ras" juice. The word "Râs," however, is capable of the interpretation of juice. I never heard of the "Ras festival." The popular meaning of "Vyabhichar" is adultery; the primary meaning is a deviation. "Achar" means practice, and is a component part of Acharya (spiritual guide) which latter means a practiser, "Shankaracharya" is the Guru of the Shivites. I have not looked carefully at the passage containing the alleged libel. (Looks at it now.) I would read it thus:—"Acting according to that commentary, or having acted according to it, you (Maharrjas) defile the wives and daughters of your devotees." There is not the slightest doubt that the passage says:—"You *are defiling*," that is the literal translation. The following words are "take off your hands from it," that is, from the defiling, &c. I have not the slightest doubt that this is the meaning which a person reading newspapers would attach to the passage. The "Bhagwat Gita" is a book of very high authority, on which witnesses are sworn, and is an extract from the Mahabharat, I have heard the story of Krishna and his 16,000 wives; Vaishnavas of all sects regard him as a Hindoo god; his incarnations are believed in by all Hindoos.

Sir M. Sausse.—Well Mr. Bayley, have you any more questions to ask?

Mr. Bayley.—I have several My Lord.

Twelfth Day, Thursday, 13th February, 1862.

Narayan Dinnanathjee, re-examined by Mr. Anstey.—I am not a follower of the Maharaj nor a Vaishnav. I am the only member of my family who is acquainted with Jeewanjee Maharaj. My nephew Shamrao is assisting the plaintiff's case by desire of Mr. Kelly, to whom he is an "articled clerk." I don't know if he is so assisting at request of Varjeevandas Madhavdas. All the parties connected with the defendant knew very well that I was acquainted with Jeewanjee. It was Mathooradass that applied to me first for the translations, and he knew very well that I was a friend of Jeewanjee Maharaj. I belive in the Bhagwat Gita on which witnesses are swron. I know Sanscrit to a certain extent, but am not a very learned Sanscrit scholar. I have no dobut of the accuracy of my translations from the Brij Bhasha. I have read four or five of the old Sanscrit dramas which are extant at the present day. I cannot read them with great facility. I belive the Sanscrit and Persian are entirely different languages; I would not refer to a Persian dictionary for the meaning of a Sanscrit word. I gave the meaning to the word "Surat" according to the best of my ability; since then I have referred to Molesworth's Dictionary. (Reads the meanings of the word.) I meant to say in my cross-examination that I had not, before the libel, heard of the "Ras mandlee" festival. I have heard of 16,000 married wives of Krishna, but I said I never heard of 16,000 "gopees." he might have had them besides. I translated extracts from Goculnathjee's Commentary, which I had not read before the libel. I

have seen pictures of "Ras lila." (Mr. Anstey hands a picture to witness.) This is not a picture of "Ras lila:" I don't know what it is. I cannot say if this is a picture of "Ras lila" understood in the sense in which defandant understands it. I did go in once when worship was going on in Jeevanjee's temple; there is no prohibition. I never went to the part of of the temple where women are admitted. I saw the ceremony of waving the lights and the image also. I never heard of an accusation of improprieties against the Maharajas. When there is no occasion for it, I would consider the throwing of "gulal" an improper, not indecent act. Throwing it on females I consider it improper, rude, uncivil, and almost indecent act. It has no connection with the sense of adultery. "Bhooka" means powder of every kind. I don't know what powder the Maharajas mix with gulal which they throw on females. Reads from a sacred book, but is not able to say if throwing certain powders on females is equivalent to seducing, (seduction). I don't know of any sect, except the Vallabhacharya, in which there are hereditary Gurus by blood or adoption. I think among the Shivites the head disciple succeeds a Guru. The Maharaja I am acquainted with is a very learned man, but I am told he is an exception. The other Maharajas are not to be respected for any learning. All Hindu Gurus allow females to approch them for being respected by touching their feet. Some Gurus don't allow their feet to be touched. I have not seen any Gurus throw gulal upon females. I have seen some females touch the feet of Gurus. I am speaking generally. In no sect that I know of is the Guru swung in a swing, or has his body rubbed with saffronwater by

males or females; I don't know of the leavings of any guru's meals being eaten by their followers, or the water falling from their "langotees" drunk. I have seen the wooden shoes of some Gurus respected. The person who puts the sacred thread upon a Hindu child, whether the father, or the elder of the family, or the family priest, is considered to be the child's Guru. I cannot say when the custom of having Gurus originated. I don't know if the dedication of "tan, man, and dhan" is made by females to any Gurus but the Maharajas. I have seen the Marathee version of Goculnathjee's commentary. I think it enjoins the dedication of "tan, man and dhan" to the Acharaya. I understood the word "Purushottam" to apply to God only; I don't know in what sense the Vaishnavas take it. Referring to the passage containing the libel, I do not agree with Dr. Wilson that it is in the suspensive mood. I never heard of a suspensive participle. I have not the slightest doubt that the passage is not conditional: I don't agree with Dr. Wilson's version of it."

(9) *Mathooradass Lowjee*, Examined by Mr. Anstey.—"I am a Bhattia merchant, and am a member of the Vallabhacharyâ sect. I know the Brij Bhasha, the Gujarati, and the Marathi languages. I am acquainted with the sacred books of my sect. (Names some of the books which he has read.) I am not able to read Sanscrit or Persian. I have given these books to Karsandass for the purpose of being produced in Court. I consider myself skilled in the doctrines of my sect and the ancient religion of the Hindoos. I heard the ancient religion expounded from the Bhâgwat and other two works. Our religion differs from the ancient religion. Idoltatry is not enjoined

by the Veds. It is mentioned in a book called "Balbodh" that none would be able to read the Veds in the Kali-Yug (present time,) and that the acts mentioned in the Veds would not lead to salvation. In a work by Gokulnathjee it is stated that the Shastras are not to be followed which are opposed to the doctrines of the "Pooshtee Marg" (the doctrines of the Vallabhacharya sect.) In our sect, "Pun Purushottam," and his incarnations Vallabhacharya and Wittalnathjee, are considered as God. The Maharajas are considered as those incarnations, and are known as the children of Vallabh. Pun Purushottam, Acharya, &c. There are 108 names given to Vallabhacharya and his descendants, which names are similar to the 108 names of the Supreme Being. Maharajas are called "Maha Prabhoo" (great God) by several devotees at the time of worship. The major part of the Bhattia caste worship the Maharajas as God, and also worship their portraits. Each Maharaj is also worshipped by his individual name, and is regarded as God from his brith, without reference to his subsequent character or qualifications. Vallabh is regarded as the incarnation of the head of the Supreme Being. In reality, he was the son of Luxmon Bhatt, a Telinga Brahmin. The Telinga Brahmins would not dine or associate with his descendants. The Maharajas have about two lacs of followers out of some twelve crores of Hindoos. Except when putting the "kanthee" round the neck of a child, the Maharaj never gives religious instruction. The Maharaj, at the performance of the "kanthee" ceremony, makes a person repeat a "mantra" (incantation) to this effect:— "I have been separated from Krishna for a long time. I dedicate my body, mind, wealth, organs, wife,

children, house, and all to Krishna." The Maharaj desires the person to repeat it to him (the Maharaj). Children are made to repeat this "mantra," as also young girls and lads on the occasions of their marriage. The Maharaj is Krishna; and a Vaishnav dedicates to him "his tan. man, and dhan." In practice all a person's wealth is not given to the Maharaj! but as to women, he commits adultery. "Ras lila" means amorous sport, carnal intercourse. This picture (an indecent one) is a correct representation of the sport Krishna had with women. There are many such pictures in the Maharajas' temples. This book is believed in by the sect; it contains this picture, in which there are represented naked women and Krishna at the top of a tree. One of the pictures represents the women, shepherdesses, as coming out after bathing; the other represents them as playing with gulal and the colour of Kessoora flowers (yellow) with Krishna. "Bhooka" is a sacred powder called "abir," and is used with gulal. The followers of the Maharajas, males and females, will, after death, become "gopees," for the purpose of having amorous sport "Ras lila," with God, in which the Maharajas will take part and enjoy both as gods and as gopees. The Maharajas when they worship the image, wear long hair because they regard themselves as gopees in this world. I had conversation with the plaintiff to the effect that I should arrange with Jeevanlalljee Maharaj to write and edit the "Propagator of our own Religion" during the time he (plaintiff) would be away from Bombay. It was started by plaintiff in the name of a society, of which he is the president. I received this hand-bill at the entrance of plaintiff's dwelling-house. I have read it. I am known in my sect by the name of "Mathoora Panth," because my opinions are opposed to the

immoralities and adultery of the Maharajas, and as if I was the founder of a new sect. This is not the case. From my infancy I was instructed by my father not to believe in the practices of the Maharajas, which, he said, are immoral and adulterous. Many persons in my sect know the fact, but refrain from avowing it for several reasons. Since the last eight or nine years I have explained to my friends these immoralities. I respected the Maharajas outwardly; my friends did the same. In the year 1912 (1855) a writing was prepared by Bhattias to prevent females from going to the Maharajas unless at certain hours, and with the view of preventing the adulteries. It was resolved that the writing should come into force after a year. There was a dispute at the time between the Maharajas and the Bhuleshwar Brahmins, and it was apprehended that, if the document was made public, the Brahmins might obtain a triumph. The year elapsed, but the agreement was not brought into force. Since this action commenced, a hand-bill was issued from the press of plaintiff's manager Purbhoodass, with the object of suppressing the agreement and preventing its being produced in this Court. The Maharajas' adulteries were a matter of notoriety in the sect, and there has been no improvement since 1855. I remember having been often to the garden of Gokuldass Tejpal with Khattao Makanjee. About eight years ago I went there with him, when at the entrance we were imformed by the *mallee* that a Maharaj was inside with four women. Seeing us go in, Lakhmidass Khimjee followed us. Gokuldass was in the garden opposite, knowing the Maharaj was in his own garden with the women. We went in. Khattao stopped in the dining-room. I entered by another door, and saw two widows sitting outside. They told me something, but notwithstanding that, I

pushed forward. I found the door of a room fastened from inside, and removed the latch with a knife. I saw there Maharaj Vachhalalljee in the act of connection with a woman. The other woman was sitting in the room. The Maharaj was ashamed on seeing me, and put on his "dhotia" (waist cloth). [Mr. Bayley objected to this sort of evidence being gone into, as the alleged act did not concern the plaintiff. Mr Anstey contended that this part of the evidence was necessary to disprove one of the allegations of the plaint. The learned counsel would rely on the 7th plea, which embraced the practices of all the Maharajas. The defendants' witness were challenged if they could name a single instance of adultery from personal observation, and now that there was an instance, the plaintiff's counsel wanted to stop the witness. The court overruled the objection. Witness continued.] "The woman was of the Bhattia caste and a member of the sect. She was about 25 or 30 years of age, and was a married woman. I paid my respects to the Maharaj on seeing him commit the act!! Gokuldass was sent for; the Maharaj gave him some sweatmeat and pan Soparee. The women went away, and a companion of Gokuldass struck one of them in the head. I refused to conceal the act; I said I never would conceal such an act. There is a club among the Bhattias of my sect called "Ras Mandlee," of which the members are very much respected, as they pay greater homage to the Maharajas, and commit more adultery. The members would not admit a stranger. They go to the meeting with their wives. I was never a member.

The Court rose at 6 P. M. The Court-house was more excessively crowded than on any previous day.

Thirteenth day, Friday, 14th February, 1862.

Mathooradas Lowjee continued.—"I have frequently seen females approaching the person of Maharajas. I have seen ten or twenty Maharajas worshipped by females. The females touch the soles of the Maharajas' feet with their hands, and then apply them to their own eyes. I have seen females perform this kind of worship to plaintiff. Several Maharajas press the toes of their female devotees. I have not seen the plaintiff do this. Pressing the toes is a sign of a desire for adultery. When the females look at the Maharajas, the latter make signs with their eyes. Accordingly, the females take this hint and retire into a room. I speak this from my personal knowledge. (A packet containing gulal was shown to the Court and put in as an exhibit.) This powder is thrown on the occasion of the Vassant Punchmee (which falls shortly before the Holee holidays) The gulal is thrown by the Maharaj on the persons of such females as he wishes to gratify his desire with. Gulal water is also thrown by means of syringes, and the Maharaj takes precise aim at the females. This is done with the same object and purpose. Females sing "garbees" (songs) of an amorous character in the presence of the Maharajas;—such as "I was asleep and you awoke me," "you will ease my mind if you will take me," "you are my husband," ahd so on. The purport of such songs is evident as sung in the presence of the Maharajas. It is notorious that the Maharajas are adulterers. The plaintiff's reputation is no way better than that of the other Maharajas. According to our Shastras, conduct such as this (throwing powders on females) is considered equivalent to adultery; and in fact, under the head of adultery in a religious book, it is so described.

"Choowa," a sort of fluid, is thrown by females on the persons of the Maharajas. Such conduct is witnessed quietly by the husbands of females who sing the "gurbees" before the Maharajas. I first became acqnainted with Jadunathjee about sixteen months ago, when he paid a visit to the house of Jeevraj Balloo and sent for me. I am acquainted with about seven or eight Maharajas in Bombay. They are Jeewanjee, the head Maharaj, Gokuleshjee, Gokuladhishjee, Chimanjee, Magganjee, Dwarkanathjee and Jadoonathjee. I have been out of Bombay, and have seen Maharajas at Cutch Mandvi, Beyt, &c. The Maharaj at Mandvi is Ranchodjee, and I was also acquainted there with Majee Maharaj; the widow of a Maharaj.

Sir M. Sausse remarked that since the Court rose yesterday, he had read over the pleas of justification, and came to the opinion that the evidence, as to the individual acts of other Maharajas ought not to be admitted, and that the evidence to that effect already on record should be struck out. It would be struck out accordingly. It would be an injustice to absent individuals to admit evidence of their guilt. Any evidence as to general reputation, would not of course be objected to.

Witness continued.—"Eventually the Maharajas refused to accede to my request not to admit females into the temple unless at certain hours. The refusal was made after some discussion. I am unwilling to reveal what private conversation I had with Jeewanjee, unless forced to give it out. Jeewanjee said all persons are masters of their own houses, and adultery has increased very much, and it is difficult to stop it. He could not, he said, remonstrate with his elders

or with those who were superior to him. If he attempted to remonstrate, he was afraid the other Maharajas would not mind him; and he, therefore, suggested that I should secure the aid of Shreenathjee and Muttreshjee-walla Maharajas. Without their co-operation, he said, nothing could be effected. As the females were the source of great income to the Maharajas, it was rather a very serious matter, he said to stop the source of income, and thus deprive them of the means of defraying their expenses. He added that, like an opium-eater, a man could not give up the practice of lust, and therefore it was not possible to put a stop at once to the practices of the Maharajas. He advised me to have patience in the matter of this desired reform. I had similar conversation with Jeewanjee on another occasion. I stayed for about four hours with plaintiff at the house of Jeewraj Balloo. He also sent for me on other occasions. On the first occasion I had some discussion with him on the subject of female education, in the course of which he desired me to do as he or the Maharajas directed. I said we are not bound to do so, unless what you say is good. He said you are bound to act according to what we say. I said I can show you precedents from the Shastras, upon which he desired me to see him at his house. I said the Maharajas do not study the Shastras and instruct their followers, as it is their duty to do. He said that was not necessary, and that the followers must do what the Maharajas directed them to do. I spoke of the desirability of establishing a library, when plaintiff said he had prepared a list for the purpose, and ask me to procure subscriptions. I said I would procure the subscriptions, but that the money could not be entrusted to him He then said I and my

friends might keep the money. This was subsequently to the publication of the libel. The Shankaracharyas do not allow women to approach them. I have read of the ten principles in the Brij Bhasha and the Marathee languages. The doctorines mentioned in these correspond in substance with those of the sacred books. The doctrines propounded in plaintiff's works and Gokulnathjee's commentary, are to my mind productive of adultery in the sect, and lend encouragement to it. It is said in the "Propagator of Our Own Religion" that we ought to be in adulterine love with God; in another place it is said such love cannot be cherished in the Kali Yug. Of this two contradictory injunctions, the former, to my mind, woud have effect over a person's mind much more readily than the latter. The adulterine love with God means something as the adulterine love between the Maharajas and the Vaishnavas. The meaning of the dedication of the "tan" is that the wives and daughters of the devotees are dedicated to the Maharajas. The seat or "bethak" of the Maharajas, even, in his absence, is worshipped and respected by the devotees. I was myself present at the meeting of the Bhattias in 1855, and took a part in the proceedings.

Cross-examined by Mr. Bayley.—"I am not called Mathoora Panth because I have founded, or am about to found, a new sect; it is only because I have opposed the adulterous practices of the Maharajas. I frequent at present the temple of Jeewanjee Maharaj. I don't send my wife to that or any other temple, though it is the custom among the Vaishnavas to send their wives. The wives of very few Vaishnavas do not go to the temples. I do not worship Jeewanjee as God. The other Vaishnavas touch the Maharaja's

feet, swing him in a swing, a sacred necklace is put round the neck of the Maharaj in the same way as it is put round the neck of the image; they take up the dust of the feet of the Maharaj and eat it or put it into their mouth. When worshipping, they call him Maha Prabhoojee, Purushottam, Vallabh Dev, &c. I can swear that the Maharaj is addressed to in these names of the Supreme Being, and not the image, which is in an inner room. The Maharajas take their seat outside. At that time, the doors of the room containing the image are shut. I have been to the temples belonging to the other Maharajas; the form of worship is the same in all. I went to worship the image only. I joined my hands to the Maharaj, but did not worship him in any way. It is stated in the sacred books that the worship of the Maharaj should be performed in the same way as that of God. The Maharajas are Brahmins, and are regarded as Gurus. As Brahmins they are not the preceptors of religion. A few of the Vaishnavas do not consider the Maharajas as gods. I do not, but my brother does consider them as such. The dedication of "tan, man, and dhan" is not at present made by all Hindus. That after the dedication, the Maharaj can do what he pleases with females, is a matter of notoriety. I have not seen any act of impropriety by the plaintiff; I have heard. About four years ago, on the occasion of the marriage of my daughter, a Maharaja was invited by the father-in-law of the girl. A Maharaja then demanded a fine from me of Rs. 5–4 which I refused to pay; it was for my appearing in mourning. "Krishna Lila" means amorous sport with Krishna, which commenced when he was six or seven years old, and lasted till he reached his eleventh year. Some four or five years ago, I saw dramas of this story of Krishna,

which were performed in Maharaja's temples before males and females. Pictures of this story are sometimes observed on the walls of some buildings, not on the walls of temples. The women, however, are not painted naked. This book containing one indecent and some other pictures was published at Ahmedabad five years ago: it is an abridgement of the Bhagwat. It is recognised among the Vaishnavas; there are some parts of it which are recognised by others. It is certainly indecent to observe naked men or women on the top of a tree. I have never appeared in that manner on a tree. I have not seen any pictures in the Veds. The Maharajas were long hair and consider themselves as "gopees" (cowherdesses) in this world. It is so stated in one of the sacred books. The hair on the head is worn by the Hindus not with the object that angels may hold us by it and pull us up to heaven: it is to be tied up at the time of worship. The plaintiff is a mere humbug when he pretends to encourage female education. I have heard that he opened a female school in Surat: and he collected subscriptions in Bombay for defraying its expenses. At the meeting of the Bhattias held in 1855, several resolutions were passed, one of which was to prevent females from going to the temples at night during the cold season. The object was to prevent them being defiled by the Maharajas. I have seen Gokuladhishjee make signs to females two or three times about five or six years ago. From their dress I knew the women belonged to our caste. The place in which the Maharaj's females reside is separate from the place where these acts are committed. I have been to his bed-room, and have seen females going into and coming out of his bed-room. I have been there only once, five or six years ago. He had sent for

me, as there was a subscription list to be prepared. Widows are constantly near the Maharajas' bed-rooms: it is their business. I have seen Dwarkanathjee Maharaj giving a signal to a female to go into his bed-room. On seeing me, he held back his hand with which he was making the signal. She was asking something of the Maharaj, and the latter said "take this"—(Witness explains the very incedent attitude and signal made.) The female was a married woman, about twenty years of age. I once threw gulal on the mother-in-law of my daughter, on the occasion of her marriage. This sprinkling of gulal was done with respect, not in the way in which Maharajas throw it. On tnrowing the gulal, I made her a present of money. I remember one Matoojee Maharaj held a meeting some years ago at Mahaluxmee, on which occasion gulal was thrown. In the island of Beyt, when the Maharajas throw gulal, they touch the females. Licentious songs are sung by females on occasions of marriage; but when they are addressed to the Maharajas, the females singing them wish for carnal intercourse with them (the Maharajas). In some songs, on occasions of marriage, the women on one side wish those on other side to exchange husbands, for the time being of course. Such a thing is never done; it is carried into practice only with the Maharaj. I have seen the seats of Maharajas at Bombay, Beyt and Mandavie worshipped by Vaishnavas. If the Bhattias of Bombay were educated at all, such adulteries would not prevail amongst them. The report in the *Satya Prakash* is not a full report of the Bhattia meeting held in 1855: the resolution about the females and the Maharajas is omitted.

Re-examined by Mr. Anstey.—"At the time of the Bhattia meeting in 1855, I read the

Sammachar in which the substance of the resolution about the females is given. It is also correctly given in the *Jam-i-Jamshed.* (These papers are put in as exhibits.) The resolution was not embodied in the report published in the *Satya Prakash* because it was not come into force until a year afterwards. I think the singing of licentious songs on occasions of marriage is going out of fashion through the primary exertions of the *Satya Prakash.* The Maharajas sitting in conclave threatened to fine me once, because I had a controversy with them. They have committed many such extortions. The plaintiff said he had opened a female school at Surat: I had no further knowledge of its being a fact. There is a principal temple of a Maharaja at Beyt."

Fourteenth Day, Tuesday, 14*th February,* 1862.

(10.)—*Dr. Bhau Dajee,* examined by Mr. Anstey.—"I am a Graduate of the Grant Medical College, and a private practitioner. I am a prizeman of the Elphinstone College. I won a prize on the best essay on Female Infanticide in Kathiawar. I was a member of the late Board of Education, and am a Fellow of the Bombay University. I am a member of the Bombay Branch of the Royal Asiatic Society, the Bombay Geographical Society and several others. There is a female school permanently endowed in my name. I am a Shenvi Brahmin, and not a member of the Vallabhacharya sect. I have obtained a diploma of the Grant Medical College. I have taken a particular interest in the history and antiquities of my country. My practice extends amongst all classes of the natives, and I was the first Graduate employed by the Maharajas of Bombay. I know

the plaintiff, whom I first saw about a year and a half ago, once or twice professionally.

Mr. Anstey.—What was the nature of the disease?

Dr. Bhau.—"Am I bound, my Lord, to name the disease which I came to know confidentially in the course of my profession?

Sir M. Sausse.—It is a proper objection on the part af this gentleman.

Mr. Anstey cited authorities to show that the objection cannot be upheld. One of the pleas asserts distinctly that the plaintiff suffered from a certain disease, and the defendants were bound to prove it.

The objection was overruled.

Witness continued.—"The disease was syphilis, which is commonly known as the venerial disease. I did not treat him for it, he mentioned to me that he was suffering from "chandee," and would send a man to me the following day. "Chandee" literally means chancre, an ulcer. There were two friends present. Mr. Lukhmidass Khimjee and Rao Saheb Vishwanath Narayan, who retired as soon as the plaintiff began to describe to me the disease. So far as I remember I did not visit him again. He said the story of the case would be explained to me the next day. It was communicated to me by Govardhandass, plaintiff's secretary and disciple.

(Mr. Bayley again objected to the witness entering into the particulars. Mr. Anstey argued and cited authorities as to the objection. Witness to Sir M. Sausse.—Plaintiff said to me that he would send Govardhandass. The object was overruled.) Witness continued.—Govardhandass came to me the next day, and said Maharaj Jadunathjee was suffering from chancre. I insisted upon an

ocular inspection, and in the meantime prescribed simple ointment. He did not send for me again. I have attended three other similar cases connected with Maharajas. I saw Jadunathjee's father at Surat in December 1849. I went to his house. He lived on the second story of his house. There was a private staircase pointed out to me, by which a person could pass out without the knowledge of those in the rooms on the first story. The plaintiff does not bear a good reputation; I have a very unfavourable opinion as to his character for chastity and morality. I have known only one learned Maharaj: the rest are not above the average of ordinary Brahmins. The Maharajas are respected for their descent, not for their learning. They are worshipped as incarnations of Krishna. I have seen them worshipped. After the visitors have paid their respect to the idol, they go to pay it to the Maharaj who sits outside. There is no order among visitors; there is great hustling and elbowing of men and women together. At the entrance to the inner room, there is a railing on which two persons stand with large cords in their hands. Accidents have occurred from the striking of the cords. I have known an instance in which ornaments were lost in the crowd. I have seen the Maharaj's bath, and hundreds rushing to drink the water dripping from his "lungotee." The women apply their hands to the soles of his feet and eat the dust. In the compound of this (the Bhooleshwar) temple, there is a one storied house to which the Maharaj repairs after he has done with the personal worship of the image. The devotees pay more attention to the Maharaj than to the idol. There are two rooms in the house and two staircases, one leading to the temple and one to the outer gate. There is an entrance from the zenana into the Maharaja's bed-room. The inmates

of the zenana have their faces always covered, but the faces of the female devotees are uncovered. In this temple I have seen several pictures representing the sport of Krishna with the gopees; I don't think they were indecent. About twenty years ago, I saw a Maharaj exhibiting indecent pictures to men and women. His conversation was all about women: it was somewhat indecent. On one or two occasions, a Maharaj applied to me for medicines which would prevent a woman from being pregnant. I had conversation with Jeevanjee Maharaj about the immorality of the other Maharajas, once publicly. I remonstrated with him, but he said he had no control over the adulterous acts of the Maharajas. This was about three years ago. The Maharajas are sectaries, and are not good Brahmins. A Brahmin has six duties to perform:—Sacrificing and assisting at sacrifices, taking charity and giving charity, &c. The Maharajas only take charity. The great majority of them are not fit to be Gurus. Their acts are inconsistent with the ancient doctrines of the Hindus. A Guru is a person who initiates a child: it may be his father, his relative or the family priest. There is no mention of "tan, man and dhan," in our "gayatri," or verse of initiation, which is to be recited only mentally. It is not innocent sport to throw "gulal" on a female: it is considered one of the three forms of adultery. (Reads the translation of a passage from one of the Hindu law books called *Mitaxara*.)

The Law about Adultery is now told. [Adultery means the mutual connection of a man with another's wife, (or the means of bringing about the connection.)]

Vyasa describes three varieties of adultery, in order that the adulterer may receive the punish-

ment for crime of the first degree, or for crime of the middle degree or for crime of the highest degree.

First Adultery.—In uninhabited spots, on untimely occasions with (slang) language other than the current language of the country, casting lewd glances towards another's wife "or smiling" [(sporting) addition in the Marathi translation] this is called first adultery.

Middle Adultery.—Enticing [a woman] by good perfumes [(such as sandle, *Huka,* Argaja, &c.) addition in the Marathi translation] flowers, incense, ornaments, clothes, food, and drink, is called middle adultery.

Highest Adultery.—Sitting in retirement and on one seat, and embracing each other, placing hands on [one another's] shoulders, and holding [each other's] hands and playing by taking hold of each other's hair is called highest adultery.

Note.—The above is a translation of the Vyavahárádhyáya of the Mitákshará from the Marathi translation of the Sanscrit original, published in Bombay by order of Government in 1844. I have compared this English translation with the original Sanscrit text published under the authority of the committee of Public Instruction in 1829 at Calcutta. The brackets at the end indicate words in the Sanscrit Original but omitted in the Marathi translation.

Who ever touches, "the ends of the cloth passed round the loins," the cloth over the breast, the thigh or the hair, or who converses in a solitary place or at an improper time or who occupies one seat (with another's wife,), is also to be caught (for punishment.)

Manu. 6. He who with pride or folly or flattery says, that he enjoyed this female before, that is also considered adultery.

"The word "lila" means amorous sport. The dance called "Ras lila" is mentioned in Professor H. H. Wilson's dictionary and in the Bhagwat. I can best describe the way in which the Maharajas wear their hair by showing a photograph taken by my brother (Dr. Narayan Dajee.) (The photograph is put in as an exhibit.) Except in one respect, the way in which they wear their hair is peculiar. There have long been public discussions and notices of the conduct and character of the Maharajas. The earliest bittter notice that I saw was in the *Dhoomketoo* five or six years ago. I believe all the Maharajas wear silver toe-rings. This passage at the end of the alleged libel I would read thus, according to my judgment:— "Oh, ye Maharajas, acting on that commentary, you spoil the daughters, &c. of your disciples, raise your hands from that, and destroy at once immoralities like the 'Ras mandalee." I think that upon the whole "acting on that commentary" is quite positive. I think "desist from acting" is the most emphatic part of the passage. The passage is addressed to the Maharajas generally. The plaintiff, before he was a Maharaj, had a very bad reputation as to his chastity at Surat; but he was then equally revered as a Maharaj.

Cross-examined by Mr. Bayley.—"In the course of my private practice, I have attended upon hundreds of different castes of natives, both high and low. I am sure the plaintiff used the word "chandee". It is possible patients may be mistaken in describing the symptoms of a disease. "Chandee" originally means silver; it is used as a slang term for chancre.

To Sir Joseph Arnould.—"I was told the plaintiff employed another practitioner; he did not like to expose himself.

To Mr. Bayley.—"I think the plaintiff was not of a sanguine, but of a phlegmatic temperament. I know nothing of plaintiff's disease personally except what I was told by him and his secretary. I wish decidedly for a better state of things among the Hindus generally. I heard from plaintiff that he had established a female school in Surat: he wanted to train up the girls in the doctrines of his sect. I have never been present at "Ras mandalees," they are described in books, and are known to exist as secret societies. I think Krishna had no improper connection with the gopees: they were in love with him.

Mr. Bayley asked witness some questions about the Veds and Purans, when

Sir Joseph Arnould said.—This is all very interesting, but we must really save time in this enquiry. If we were sitting here to listen to lectures on the Purans, surely we could have no better authority than Dr. Bhau Dajee.

Re-examined by Mr. Anstey.—The story of the gopees and Krishna is not confined to the Vallabhacharya sect. Uneducated persons take it literally, but not so enlightened persons.

To Sir M. Sausse.—"Some of the Maharajas, as I have heard, are men of unspotted character, men of piety, and good men ; and therefore I said the passage refers to the Maharajas generally.

To Sir Joseph Arnould.—"I think the passage in question is directed as an exhortation to the whole class of Maharajas, not to the plaintiff personally.

To Sir M. Sausse.—" From the context, I say the remark is not necessarily directed to the

plaintiff, or necessarily implied against him. It is possible a reader may understand that it applies to the plaintiff.

To Sir Joseph Arnould.—"I myself understand it as a general exhortation, and any intelligent reader would so understand it;—I mean a reader of fair ordinary intelligence.

To Sir M. Sausse.—"The expression "adopt a virtuous course of conduct" does not imply any imputation against the plaintiff; it is an exhortation to set a good example.

To Sir Joseph Arnould.—"The exhortation I think is carried on from the commencement of the paragraph to the words "desist from that." Nothing is imputed to the plaintiff distinctly. I think decidedly that the plaintiff is not singled out. Any imputation upon him would be inferential, not direct.

To Sir M. Sausse.—"I am of opinion that it is not intended against the plaintiff in a direct manner. The article in the original does not allude specially to the plaintiff. The English translation, now in my hands, tends that way. Reading the Gujarati article, I don't think the plaintiff is intended to be included among the licentious Maharajas. From my knowledge of his antecedents, I would include him.

To Sir Joseph Arnould.—As a reader not acquainted with his antecedents, I would be doubtful wether I must include him or not."

(11.) *Dr. Dhirajram Dulputram*, examined by Mr. Anstey.—"I am a Graduate of the Grant Medical College and a private practitioner. I know the plaintiff, whom I first met in July 1860, at the girl school of Mangaldass Nathoobhoy. In consequence of something said to me, I called upon him at his house. In December 1860, I attended

upon him professionally at his house. He was suffering from venerial affection; I made an ocular examination of it, and found it to be an ulcer. He gave me the history of the case; he said he had suffered from it three or four months previously and had caught it from an impure intercourse with a woman. I prescribed the blackwash externally, and mercury internally. Plaintiff said he suffered some years ago from the same affection, and had taken a preparation of mercury, prepared by himself. Plaintiff asked me if I had read in medical works that the disease would go by having intercourse with a female free from it. I said I had not. He then said he had twice tried the experiment at Surat. He succeeded once in it, but not the second time, because he was then much reduced.

Cross-examined by Mr. Bayley.—"The plaintiff, when I saw him in December 1860, appeared to have been suffering for three months previously. My opinion as to the ulcer being syphilitic was confirmed by plaintiff's history of his case. I did make a personal examination. I treated the plaintiff for more than a month. I had seen him in Surat a good many years ago. There is a difference of opnion among doctors as to whether mercury is necessary in Syphilis. The blackwash I applied externally was mercurial. I have treated a good many persons in high rank for this complaint. The plaintiff was alone in the back-room when I saw him: the room had more than two windows. In the commencement of the treatment, I told plaintiff not to go out. I saw him sometime before I treated him. I have known the defendant for the last seven or eight years; but never communicated to him the plaintiff's complaint, nor even to Lukhmidass Khimjee, nor to anybody else.

I never mentioned anything about this to anybody before appearing in the witness-box. I was born a Vallabhacharya, and am a Kayasth. I do not at present go to any of the Maharaja's temples. I have been practising for the last three years. The plaintiff did not tell me he had prickly-heat."

(12.) *Lukhmidass Khimjee,* examined by Mr. Dunbar.—" I deal in piece goods and am a member of the Bhattia caste. I am one of the twelve shetts of the Mahajans. I have known the plaintiff for the last ten or eleven years. I first became acquainted at Beyt, whither I had been on a pilgrimage. Our acquaintance ripened into friendship. At Beyt, I made presents to him when I invited him to my residence. I also made presents to him on another occasion. There is a temple dedicated to Luxmijee at Beyt, where I once saw Jadunathjee Maharaj. There were females present in the temple. After throwing gulal on the image, he threw it upon a number of persons, and in doing so, he pressed the breasts of a Bhattia girl about fourteen years of age. As he squeezed her breast, she smiled. He threw the gulal upon the crowd, so that they might not see through it what he was doing. I used to visit him at the place where he had put up. My maternal uncle, Damodhar Dewjee, accompanied me. I want to plaintiff about one o'clock in the day, wheh he was in his bed. My uncle went up and shampooed one of his legs. I went up and followed his example. It is a great mark of respect to shampoo the Maharaja's legs. The Bhattia girl above alluded to, came there with a widow, about a quarter of an hour after our arrival there. The widow whispered someting into plaintiff's ears, upon which he desired us to go out. We obeyed the order. The widow came out with us and went in again. The

girl was left in the bed-room. When I went outside, my uncle informed me of the visit of the females. Afterwards, the widow came out, shut the door, put up the chain and held it with her hand. The girl was inside all the time. In consequence of certain conversation I had with my uncle, we both went in again to see "Ras lila" *i. e.*, the plaintiff's conversation with the girl. We were allowed to go in the moment we expressed a wish. I saw the plaintiff having carnal connection with the girl. Several people are often anxious to see such "Ras lila." Plaintiff asked my uncle what I would pay for seeing the "Ras lila." My uncle said that I would serve him (plaintiff). I had to pay some money before I was allowed to see the "Ras lila." I was then eighteen or nineteen years old. The followers who are allowed to see the "lila," as well as the female who is defiled have to pay money for the indulgence. It is considered pious act, and sure to lead to the paradise known as "Gowlok." I left the room shortly afterwards from shame ; my uncle remained inside. Two or three days subsequently, I saw another married Bhattia female enter the plaintiff's bed-room. When I went on a pilgrimage to Gokul Matthura at Benares about eighteen years ago, I first heard of a " Ras mandlee. " I was present at " Ras mandlee " at Beyt about the time I spoke of. There were twelve or thirteen men and thirteen or fifteen females, I was held daily for some days at the appointed place. On these occasions, after the persons had taken their seats, the stories of the 84 and the 252 were read from a book. Some offering is then made to the book, and sweetmeat, fruit, or parched rice is placed upon the book. The sweetmeat or fruit is then distributed among the meeting. The persons who are not members, and who came merely to listen to the stories, then left

the room. I was a stranger at the meeting, and when I retired the men and women were in the room. I saw beds spread near each other on the floor before the lights were put out. There was a heap of mattrasses which were put separately on the floor after the strangers had withdrawn. My uncle was a member, and was desired by the other members to ask me to go out. The "Ras mandlees" are a matter of notoriety; even a child of five years knows of its existence. Their existence is notorious this way:—they read the stories there, misinterpret them, and have connection with the women. Each member must go to the meeting with his wife, except the "Varkats," who are admitted without their wives. Those followers of the Maharajas who are members of the society are reputed to be pious and staunch devotees. The Varkats are procurers of women for the Maharajas. On one occasion, plaintiff told me "the Varkats are persons who have corrupted us, Maharajas." On another occasion at Beyt, I was sitting near the plaintiff, when a female came there. On seeing me, she was ashamed and drew her cloth partially over her face. My uncle therefore said we would go away. I went and stood at some distance, and saw the female and the plaintiff retire into his bed-room. I saw plaintiff on three or four occasions press with his toes the hands of females who worshipped him by touching the soles of his feet. Pressing the toes is the signal for adultery. I saw plaintiff at Byculla where he had put up, the second or third day after his arrival in Bombay.

Fifteenth day, Thursday, 20th, February 1862.

Lukhmidass Khimjee, examined by Mr. Dunbar:—"On account of my having given evidence here the other day, I was abused and ill-treated by a number of Banias.

Sir M. Sausse—If you give the names of those persons on affidavit, the Court will take notice of the matter.

Mr. Anstey corroborated the witness having been an eye-witness of the assault.

Sir M. Sausse ordered it to be explained to all in Court, that it was informed of threats and intimidation used against the witness, and that such conduct would be severely punished by fine or imprisonment or both.

Witness continued.—"I am aware of plaintiff's arrival in Bombay 1800. I saw him two or three days after his arrival. I was in the habit of seeing him frequently, two or three times a day. I was a friend of his. I invited him to my house, introduced him to my friends, and induced them to invite him. I made him presents of furniture, lamps, chairs, sofas, &c. I know plaintiff was the editor of two pamphlets. I had a hand in getting them published. I made an arrangement with a printer named Ganpat Krishnajee, for the publication of plaintiff's two pamphlets. I did so at his request. The pamphlets were edited by plaintiff: the Maharaj dictated, and Goverdhandass, his secretary, acted as his amanuensis. I have seen the handbill issued by plaintiff, asking the Vaishnavas to become subscribers to the pamphlet. I recommended him to issue a handbill to gain more subscribers; the Maharaj dictated the contents of the handbill. Plaintiff caused a letter to be published in the *Chabook* newspaper, in which there is mention made of the Walkeshwar and Byculla roads, alluded to in the libel. Plaintiff, before the action, said to me:—"All the Maharajas are running away from Bombay in consequence of publications in the newspapers, and I have

therefore come down to Bombay for the purpose of discussing and debating with the editors." He asked me if an action would proceed during his absence from Bombay. I said I did not know. Kursondas Nensey, who was present on the occasion, said the action would proceed even in his absence. Plaintiff then asked me if his evidence could be taken at his own house is he remained in Bombay. I said that that was impossible; that Jeevanlalljee Maharaj was summoned to Court some six years ago, but that all efforts failed to obtain for him an exemption from attendance. Plaintiff then asked whether, if he were to go to Court, he would get an elevated seat near the judge! I subsequently came to the conclusion that the plaintiff had not left off the practices he pursued at Beyt For a few months I was misled by his professions for the promotion of female education, widow remarriage, &c. One day whilst I was sitting at the plaintiff's temple, two females, one a married woman about 25 years of age, and the other a widow, came up. The former, when she approached the staircase, produced a silver goblet which she had concealed under her clothes. The Maharaj on seeing her, made her, a signal, to go into his bed-room. She did not understand the signal, whereupon a female servant of the Maharaj, about 24 years of age, beckoned to her and said "come hither, Vaishnav!" Both the females then entered the bed-room. Plaintiff asked me to go and make immediate arrangements for the publication of the pamphlet. I went downstairs to the verandah but having had a suspicion in my mind, I went up again into the same room where I had been before. I found the widow sitting outside the door. I remained there about half an hour, when first the Maharaj came out and turned

pale on observing me. I also saw the young female come out; she was similing and laughing. I thereupon thought that plaintiff had carnal intercourse with her. She had not the silver goblet in her hand; it must have been given to plaintiff. The widow and the young woman then left. I told plaintiff I had some business and he had better send his own man to the printer. I also left and visited plaintiff again in the evening, when he took me into an inner room for the purpose of private conversation. He opened the conversation by asking me what I had done with regard to opening female schools here. I said to him 'Maharaj, this is all a sham! you profess to be a reformer, while inwardly you commit such acts!' He denied the charge. He said he had been inside for the purpose of accepting sweetmeat or fruit. Plaintiff then adroitly changed the subject of conversation. On another occasion, I had conversation on the same subject with plaintiff. I said you told me that you accepted sweemeats from female devotees openly and how it was that you went inside the other day with young woman. Plaintiff said he did so at the desire of the woman I then said why he kept the widow out; to which plaintiff made no reply. I have seen male and female devotees touching the soles of the Maharaja's feet, and I have seen him press with his toes the hands of females, young and beautiful. About a week subsequently to what I have said above, I saw plaintiff taking some medicine. I had another conversation in the bed-room with plaintiff the same evening. He directed me not to fathom him and said 'What income do we derive from you, males; if you make arrangements for large profits to us, I'll undertake to root out adultery from the practices of the Maharajas'. Plaintiff's father or grandfather having committed a theft in Oodey-

pore or the neighbourhood, he would not at any time be allowed to enter those territories without a pass. Plaintiff said he suffered from syphilis. I said, 'Maharaj! I am now perfectly convinced you have not reformed your conduct as yet.' Plaintiff said do not fathom. Our income is chiefly derived from females; if you make other arrangements for it, I will undertake to root out the practice of adultery from among the Maharajas. He said it was impossible to give up at once such practices; but I have made some reform in my conduct. Plaintiff asked me to bring in Dr. Bhau Dajee. I took Dr. Bhau Dajee to the plaintiff's residence. Rao Saheb Vishwanath was with us at the time. (Witness described what occurred then and in the evening.) Some days afterwards plaintiff informed me that he was uuder the treatment of Dr. Dhirajram. He became pale and sickly. I took Dr. Bhau Dajee to plaintiff about the middle of September 1860. The general reputation of the Maharajas as regards adultery is very bad. I have personal knowledge of the licentious conduct of ten, twelve or fifteen of them. After the meeting of the Bhattias in 1855, I had conversation with Jeevanjee Maharaj on the subject of the conduct of the other Maharajas. I as well as others were sent for by him. We said the printers were discussing, and he had been served with a summons. Dr. Bhau, Vinayakrao Vasudev, and if I mistake not Narayan Dinanathjee, were there. Dr. Bhau, said to the Maharaj, "reform your conduct, be pious, establish schools preach to your followers, &c., and none dare publish any thing against you." It was a long lecture that Dr. Bhau gave: I merely give the substance. Jeevanjee said he would not be able to control the acts of the other Maharajas; as their principal income was derived from females.

Cursetjee Cama, who was present on the occasion, said a great deal to Jeevanjee Maharaj. The Maharaj said, "As regards myself, I am ready to give my signature to any arrangements; I will now leave off such practices." He offered to give, but did not give his signature. Jeevanjee, on finding me on one side, accused me of, and reproved me for divulging secret matters. No arrangement took place. I was invited to the general meeting of Vaishnavas held last year; my consent was not taken. as it ought to have been. I discontinued my visits to plaintiff afterwards.

Cross-examined by Mr. Bayley.—"The plaintiff was about 28 years old when I saw him at Beyt; he is now about 40 years of age. At that time, I considered such acts as plaintiff was guilty of, as religious. My views have changed since the "slavery bond" to which I put my signature as did several Justices of the Peace put theirs. I knew from her dress that the young female I saw at Beyt was a married woman. Plaintiff presided in the year 1860 at an exhibition for the destribution of prizes to the female schools, of Mangaldass Nathoobhoy. Plaintiff expressed an opinion against the system of education, saying the girls should have been taught religious doctrines only. Vinayak Vasudevjee remonstrated against this. The subject of remarriage was talked about everywhere at the time. A meeting was conveeed by plaintiff to discuss the question of remarriage. It was largely attended. I discontinued going to plaintiff on account of his bad conduct. I am not acquainted with the two females who visited the plaintiff at his residence in Bombay. Plaintiff is said to be a Guru of religion, but he does not act; so he never gives instruction. It is true he ought to do so. I signed the "Slavery

bond" unwillingly. By my coming here to give evidence, I have forfeited that bond. To the Court.—"I have spoken five or six years ago to my friend Mr. Dhunjeebhoy Framjee, partner in the house of Wallace & Co., about the immoral practices of plaintiff, I saw at Beyt. I had also about a year ago conversation on the same with Khatau Mackanjee, Mathooradass Lowjee, and Nersey Jetha. The conversation took place in the garden house of Gokuldass Tejpal when my maternal uncle Damoder Dewjee was there. He is now at Zanzibar, I have also spoken to Mr. Mangaldas Nathoobhoy at Matheran last year."

(13.) *Kalabhai Lalloobhai*, examined by Mr. Anstey,—"I am a Kayasth, and a student of the Elphinstone Institution. I know the plaintiff whom I saw in Surat about three years ago. He was a friend of my father. I had a conversation with him on the subject of widow remarriage, I visited him frequently and saw him in different rooms in his house. I used to receive from plaintiff folded *pan soparee* when I went to him. I was sitting one day with him on the first story when a Banya girl came in company with a female servant of the Maharaj. She was about fourteen or fifteen years. She passed across the hall into a side room, and a Banya who was sitting near us got up and went away. Plaintiff left the hall and went into the side room. The female servant sat in the hall. Four or five females came into the hall afterwards. I went to have my usual *pan suparee* from plaintiff towards the side room, and on opening the door of it, saw plaintiff seated on a couch opposite the door, kissing and embracing the young woman. Plaintiff on seeing me left the female came to the door and said 'O I forgot to give you the usual *pan suparee*; so

saying he came out with me and desired his attendant to get me the *pan suparee* which I received and went away. Plaintiff went back to the inner room. I used to visit the plaintiff in Bombay. On one occasion, I saw two or three "chachias" sitting near plaintiff who advocated in their presence the adulterous doctrines of the sect. Plaintiff said there was no sin in adultery; but it was wholesome and it purified the blood. He gave an instance of the athletes of tho Gaekwar court, who he said kept many concubines, and used to engage themselves in cohabiting with them before they come out for a wrestle. On another occasion when I was standing in the house yard of plaintiff's residence, two or three Vaishnavas who were speaking among themselves said, (pointing to a female) that Jadunathjee Maharaj was in love with in her. Some days after when I did not attend the school on account of a holiday, I saw the same female passing by the Kalbadevi road. I was going on some business; but on seeing her I followed her to plaintiff's. She went into the private room of the Maharaj and I went to the visiting room where plaintiff was sitting. After a few minutes plaintiff followed the young woman and I remained sitting in the visiting room. About half an hour after, he came out and I smiled at him when he asked me why I smiled. I told him you are affecting a great reform. He smiled at this and made no remark. The young woman came out after a time and went away smiling. Her dress was ruffled when she came out. From the dress and the jewels she had on, I presume she was a respectable woman. I had some conversation with plaintiff about the "Propagator of our own Religion; he said it was published on his behalf. One day at Surat, I saw plaintiff refuse to allow some females to touch the soles of his

feet; and he told them to touch the feet of his wife in the zanana. He explained to me afterwards, that allowing females to touch his feet of might give rise to suspicious as to his chastity. After this, while at Bombay, I saw him allowing females to touch his feet. To my knowledge, the plaintiff tells lies. His general reputation in Surat, was that he was immersed in adultery. My father is Sheristedar in the Sudder Adawlut at Bombay. The respect paid to the plaintiff has not diminished since the publication of the libel.

Cross-examined by Mr. Scoble.—"I am 16 years old, and am the nephew of Dr. Dhirajram. I am acquainted with the defendant. Plaintiff was a married man when I saw him at Surat. I told Narmadashanker of the plaintiff's acts which I had seen.

Re-examined by Mr. Anstey.—"I am sure that the female whom I followed was not the plaintiff's daughter."

(14.) Cursetjee Muncherjee, examined by Mr. Dunbar—"I am the manager of the *Chabook* newspaper, I know Purbhoodas, the plaintiff's secretary, who manages this case. He brought to me this hand-bill (produced in court) and a small pamphlet of "garbees." I took the printed copies to plaintiff's residence, where I was told by a servant of the Maharaj that the money would be paid us by Purbhoodass."

(15.) Kanoba Ganpatrao, examined by Mr. Dunbar.—"I am a printer and remember having printed the "Propagator of our own religion" and their pamphlets the manuscript which was brought to me by Jadunathjee's men. The proofsheets were sent to the Maharajas house, to one Goverdhandass. This is the written order I

received for sending proofs to Goverdhandass, at the house of Jadunathjee Maharaj."

Mr. Anstey offerred to put in the evidence and judges notes in the "Bhattia Conspiracy Case."

Mr. Bayley objected, on the ground that those proceeings did not concern the plaintiff.

Mr. Anstey argued at some length that the proceedings were closely connected with this case; there being this difference that, in the former, the plaintiff acted through his agent, and appeared now in his name to seek redress. The two cases are inseparably connected.

The Chief Justice suggested the better course would be to cross-examine each witness as to whether or not he signed the "bundobust" in question. It did not appear quite necessary to put in the record and the Judge's note in that case.

Mr. Anstey stated in reply to an enpuiry made by the Court, that there were several more witnesses to be examined for the defendants.

The Chief Justice remarked that in justice to the other suitors of the Court, and with the view to save public time, no more evidence which was merely corroborative of what has been already adduced, should be formally recorded, but that such witnesses should be only snbmitted to cross examination. Witnesses as to new facts would of course be allowed to be examined.

Sixteenth Day, Friday, 21st February 1862.

Mr. Anstey gave the gist of the evidence each witness was expected to give, before calling him into Court.

(16.) Chaturbhuj Waljee, examined by Mr. Anstey.—"I am a Bhattia of Vallabhacharya sect. I know the plaintiff, whom I visited at his residence in Bombay. One day, a female having gone into the hall, entered an inner room. A female servant told plaintiff something in his ear, where upon he left the hall on pretence of going to take his dinner, and entered the inner room. Plaintiff went inside, saying, I am going to dine. About half an hour after he came out. The female came out soon after him and went away. I saw no change in her dress. After a few minutes the Maharaj again went to dine.

Cross examined by Mr. Bayley.—"I used to visit the plaintiff almost daily. I never saw the zenana. I had once been into the inner room, to which there is only one door. I was asked to go in by the Maharaj, who wished to tell me a secret story. I presented him two or four books which he asked from me. I observed nothing in the hands of the female above alluded to. I studied for a year and a half in a school under the defendant Karsandass. I did not tell him any thing about the female. I visit the great temple of Jeevanlalljee Maharaj. I had conversation with plaintiff about adultery. Kalabhai Lalloobhai was present at the time. I asked plaintiff how was it that great men committed adultery of which there is prohibition in the Shastras. To this plaintiff replied 'there is no sin in adultery; on the contrary it gives strength to and purifies the blood of man. And I say this from my own experience.; Then he gave an instance of the athletes of the Gaekwar Court.

Re-examined by Mr. Anstey.—"When I went into the inner room above alluded to, I saw a bed there. The books I presented to the plaintiff

related to the Maharajas. They were written against the Maharajas, and I gave them to plaintiff within the month after his arrival in Bombay."

(17.)—Cursetjee Nusserwanjee Cama, cross examined by Mr. Bayley. "I was present with some other persons at the residence of Jeevanlalljee Maharaj, when a conversation took place. There was an understanding with me that nothing of the conversation was ever to be divulged to any one or in a court of justice. Afterwards there was a similar understanding with Lukhmidass Gokuldass and others. I am unwilling to divulge the conversation which was confidential. I had two conversations with Jeevanjee Maharaj, on the second of which Lukhmidass was present."

Mr. Anstey did not wish to press the witness to divulge the conversation or the subject of it.

(18.)—*Damodar Jetha*, cross-examined by Mr. Bayley.—"I am a Bhattia Shroff, and know the plaintiff, with whom I had a conversation once at the house of Karsandass Nensey about a year and a quarter ago. The Maharaj was sitting on a sofa, and we were sitting on the ground. The Maharaj spoke of the "Varkats." The owner asked him what was the explanation of the adultery committed by the off spring of Gosains. He said whatever evil is committed, it is through the Varkats. He did not say he was corrupted by them. The Varkats are at present in the habit of living in other persons' houses as a matter of charity; they commit bad acts, and go constantly to the Maharajas.

Re-examined by Mr. Anstey.—"Karsandass Nensey is absent from Bombay: he was summoned as a witness in this case."

(19.)—*Mangaldass Nathoobhoy*, examined by Mr Anstey.—"I am a member of the Bania caste of the Vallabacharya sect. I am a shett of my caste, a Justice of the Peace, and a grand juror. I have founded the female school. I was present on one occasion with others at the house of Jeevanjee Maharaj. Dr. Bhau opened the conversation on the subject of the adulteries of the Maharajas. Jeevanjee said he was unable to control the conduct and parctices of all the other Maharajas. He expressed a wish to do all he could. Dr. Bhau remarked that, if they adopted a virtuous course of conduct, none dare lisp anything against them. At a private conversation with Jeevanjee (which witness divulged on being ordered to do by the Court) he was informed that it was impossible to put a stop at once to the practices of the Maharajas: their chief income was derived from females, and they could not be prevented from visiting the Maharajas, &c.

Cross-examined by Mr. Bayley.—"I invited plaintiff once to preside at an exhibition of the girl's school at my house."

(20.)—*Khattau Mackanjee*, examined by Mr. Anstey.—"I am a member of the Vallabhacharya sect. I am a member of the firm of Jewraj Balloo, and decide with him any disputes in the Bhattia caste. I was present in the garden of Gokuldass Tejpal about six or seven years ago. I was present at the Bhattia meeting in 1855. I remember having been present at a meeting convened by a Maharaj for the purpose of raising funds for himself. Several Maharajas ask for money when they want it, and I cannot give the particulars of any one of my visits unless the Maharaja's name is mentioned. I remonstrated with a Maharaj about the size of the gate to his temple, which could not

admit men and females separately. There is at the temples a promiscuous crowd of men and women, which I consider improper. I have not observed an instance of indecency in the crowd. I have heard some immoral and indecent songs addressed by females to the Maharajas, when the latter are invited to their houses."

(21.)—*Narsey Jetha*, cross-examined by Mr. Bayley.—What have you come here to prove ?

Witness.—I don't know what I am to be asked.

Mr. Bayley.—Then, I wont ask you anything.

(22.)—*Thackersey Narranjee* to Mr. Anstey.—"The plaintiff has a very bad reputation for his morality and chastity in Cutch Mandvi since the last seven or eight years.

To Sir Joseph Arnould.—"I heard that he had a bad reputation for his adultery."

(23.)—*Rawjee Sunderjee* to Mr. Anstey.—"I knew the plaintiff in Cutch Mandvi. He bore a bad character as to his morality.

To Mr. Bayley.—"It is well known that all the Maharajas are bad. In Cutch I heard that the plaintiff's character was worse than that of the other Maharajas. I also heard that gambling was going on in his house."

(24.)—*Kandass Mancharam* to Mr. Anstey.—"I am Assistant Engineer in the Garrison Engineer's Department, am a native of Surat, and know the plaintiff. He bore a bad character in Surat as to his chastity and morality.

To Mr. Bayley.—"I don't think any but the over-devoted could have had a good opinion as to the plaintiff. Plaintiff was of a frolicsome character, given to play and love."

To Mr. Anstey.—"I heard from those who visited the temple that plaintiff used to laugh and smile and joke and appear gay in the presence of females who went to the temple."

(25.) *-Janardan Ramchandra* to Mr. Anstey.—"I am employed in the Post Master General's Office, and am the author of a Marathee book called "Kavi Charitra," on the subject of the Vallabhacharya religion."

(26.)—*Narmadashanker Lalshanker* to Mr. Anstey.—"I am a Nagar Brahmin, and have taken an interest in the question of widow remarriage. I am the man who had a discussion with the plaintff at a public meeting. He declared himself against widow remarriage. I furnished the manuscript to the last witness for the book on the Vallabhacharya sect; it was in reality my production. I have studied the books of the Vallabhacharya sect, and have no doubt as to the meaning of *tan*, *man*, and *dhan*; the dedication thereof includes wives, daughters, sons, property, body, soul, &c. The plaintiff bears a bad reputation everywhere, in Surat, Mandvi, Cutch, and Bombay. I know the witness Kallabhai, who has communicated to me many things about the plaintiff.

To Mr. Bayley.—"I have been a poet since the last seven years. I was delivering lectures at my house on the improprieties of the sect, to bring the devotees to their senses, and to make them shun the society of such nasty persons as the Maharajas. I do not except Jeevanjee as being virtuous. I wrote my essay against the Vallabhacharya religion from materials furnished me by Shastri, from books, and by the devotees themselves. The dedication of *tan, man,* and *dhan,* is addressed to the Maharajas; I am quite sure of this from my study of several works. My version

of the doctrines was approved of as correct by several Shastris. I informed the defendant of the plaintiff's bad character in Surat before the publication of libel.

To Mr. Anstey.—My compiling a dictionary detained me last year from going to Surat. The Shastris who approved of my version would not like their names to be known publicly in connection with the book. There is no morality of any kind whatever in the doctrines of Vallabhacharya. The Maharajas are not preceptors of Religion, much less of the ancient religion of the Hindoos."

(27.)—*Ramdass Bhanjee*, to Mr. Anstey.—"I am a Bhattia and a member of the Vallabhacharya sect. I have previous to the publication of the alleged libel written articles in the Gujarati newspapers against the Maharajas. I also wrote letters to the *Bombay Times* on the same subject. I tried to expose the adulteries and the godly pretentions of the Maharajas.

To Mr. Bayley.—"I am a member of the sect, though I hate some of its immoralities. The defendant never assisted me in writing those articles. I have not abused any of the Maharajas; I have exposed their immoralities. I am the editor of the *Khojah Dost*, which is the organ of the reformers in the Khojah community."

(28.)—*Tribhuvandass Dwarkadass* to Mr. Bayley.—"I am the first assistant teacher in the "Gokuldass Tejpal Anglo-Vernacular School." The Parsee defendant came to me this morning to say that my evidence would be required in the Supreme Court: I was served with a subpœna within the last half hour. I have written articles in the Gujaratti newspapers on the conduct and character of the Maharajas. I have not visited

any of the temples for the last five years, though I am a member of the Vallabhacharya sect."

(29).—*Nanabhoy Pestonjee*, to Mr. Anstey.—"I am the editor of the *Chabook* newspaper. I remember these papers (exhibits) having been brought to me by a man whose name I believe is Parbhudass."

Mr. Bayley admitted the papers were taken to the *Chabook* newspaper by Parbhudass, the plaintiff's alleged secretary.

(30.)—*Nanabhai Rustomjee* to Mr. Anstey.—"I am one of the defendants in this case and managing proprietor of the *Union Press*. I was the printer of the *Satya Prakash* newspaper, and the co-defendant was the editor. The paper was not started for profit to the proprietors, but in the cause of reform in the native community. The receipts fell far short of the expenditure. I printed some numbers of the "Propagator of our own Religion" for the plaintiff. The manuscript was brought to me by his secretary Parbhudass, who manages this case. I sent the bills to Dr. Dhirajram, who paid them on behalf of the Maharaj."

The defendants case concluded here.

At Mr. Bayley's request, which was, he said, made with the view to save time, the Court allowed the case to stop for a few minutes, to enable the plaintiff's counsel to ascertain from his client whether it was desirable to call more witnesses on his behalf.

Mr. Anstey protested against such delay as being unprecedented to his knowledge, and as it might cause an unfounded impression among the natives.

The Chief Justice said that the request was entertained with a view to save public time; and

the Court could not stop to enquire what impression might be produced thereby.

Court adjourned, therefore, for ten minutes. On the Judges taking their seats again, Mr. Bayley said he would proceed to examine witnesses for the plaintiff.

One Lalloomall Mohttoomall was called as the first witness, when Mr. Anstey stated the witness was sitting in Court during the trial. The man denied having been present in Court. Three witnesses swore that he was present in Court during the trial, and was seen handing notes to Parbhudass, the plaintiff's secretary.

Mr. Bayley cited authorities to show that the power of the Court was limited to fining the witness who could not be prevented from being examined, for disobedience of an order of the Court.

Mr. Anstey argued that the old established practice in England was the general practice of this Court, and the Judge is left no discretion to depart from it. The plaintiff had every opportunity to bring this evidence before; and when it was borne in mind that the men swore falsely as to not being present in Court, when several persons were ready to swear that he was, the Court, the learned counsel trusted, would not admit the man's evidence.

The Court was of opinion it had no power to object to the witness being examined. The current of judicial decisions in England has been for some years one way, that is, against rejecting the evidence of a witness. The Court had no power to exclude a witness, though he might be made subject to observations for his conduct and disobedience of the Court's order.

"As the witness was likely to take some time in examination, the Court rose at half past 5 P. M.

"At the close of the proceedings, the Chief Justice ordered the man, Lalloomall, Mohtoomall to be taken into custody by the Sheriff until next (Saturday) morning, for contempt of Court and for wilful disobedience of the Court's order."

Seventeenth Day, Saturday, 22nd February, 1862.

Mr. Austey asked the Court to take a note of his objection to the reception of the evident of witneses who, in disobedience of the order of the Court, were in Court, during the trial of the case, The learned counsel cited several cases in support of his argument, that the evidence was inadmissible.

REBUTTING EVIDENCE FOR THE PLAINTIFF.

(1) *Lalloomall Mohtoomall*, examined by Mr. Scoble —"I am a Mooltanee, and a member of the Vallabhacharya sect. I know the plaintiff, during the whole time of whose visit at Beyt, in 1907, I was there. I went to visit him every day: he was then about 23 or 24 years of age. His married wife was dead at the time. I know Lakhmidass Khimji now; I never saw him visit the plaintiff at Beyt. Plaintiff bore a very good reputation at Beyt during the period: there were no stories current against his chastity or morality. He resided at the mansion of Jagannathjee Maharaj. Vaishnavas used to visit the Maharaj at all times of the day when he happened to be in the house. He had retinue of ten or twelve servants, but had no Varkats with him. He had with him a Bhattia of Mandvi. There are several temples

at Beyt, one of which is that of Laxmijee. The room in which the image is placed is about ten or twelve feet square. There is an outer court to this shrine. A tax of one coree and two cents is levied by the officers of the Gaekwar Sirkar on all persons who visit the temple of Laxmijee. Jadunathjee arrived at Beyt in the month of February, and the festival of Vasant Panchmee occurred three or four days afterwards. During this festival gulal is thrown on the image. It is not usual at the temple of Laxmijee to throw gulal on the Vaishnavas. In three of the thirteen temples at Beyt it is customary daily to throw gulal on the persons of the Vaishnavas. In the other temples, with the exception of Faganwad the first, no gulal is thrown on the worshippers. I deal in gulal, piece goods, &c., at Beyt. On occasions when the Maharaj throws gulal on the image at the temple of Laxmijee, he is surrounded by the priests of four other temples: women and men accommodated separately inside the temple. In the court-yard there is a promiscuous crowd of males and females. The thirteen temples are under the guidance of persons belonging to four "gadees" or seats. The Gaekwar's men keep order at the temples at the time of worship. There is one officiating priest at the temple of Laxmijee, and four sepoys maintain order there during worship. All the temples at Beyt belong to the Vallabhacharyas. The images are worshipped from outside the temple unless the tax is paid. The Maharaj makes a circuit of all the temples twice a day, in less than half an hour. I never heard of a "Ras mandlee" at Beyt: I read of it here in the newspapers."

In the cross-examination by Mr. Anstey, the witness, after shuffling a good deal admitted that

the witnesses who swore on Friday to having seen him in court, swore to the truth.

Re-examined by Mr. Scoble.—I believe conscientiously that I did not come into Court."

Sir Joseph Arnould.—Now, what reliance can you expect to be placed on the statements of this man? As far as I am concerned, I cannot attach any weight to what he says.

(2.) *Devidas Hansraj*, examined by Mr. Scoble.—"I am a Bhattia and a native of Dwarka. I am a Vaishnav. My Guru Nathujee Maharaj, is dead. I know the plaintiff, whom I saw at Dwarka, and invited him to my house on the occasion of my daughter's marriage. For chastity and morality, the plaintiff bore a good character. I heard no stories against him. He remained my guest for four or five days: I kept him in a separate house, a dharmashalla, which was not distant from my house so much as half a mile. I saw or heard nothing against him. Of the thirteen shrines at Beyt, seven, including the temple of Laxmijee, are in charge of the Gaekwar, and to each is attached a *choubdar*. I have never seen gulal thrown on the worshippers at the temple of Laxmijee; never heard at Beyt of the existence of the "Ras mandlee:" If I did, I should have punished the members of it. I came to understand its nature through the Gujaratee newspapers of Bombay. I know nothing at all about "Rasmandlees."

Cross-examined by Mr. Anstey.—"I was ordered into custody by the Gaekwar for three years, for having apprehended robbers in a foreign territory. Major Shortt reported against me, after having tried me. He did not fine me five thousand rupees. During the three years of my custody, I was not able to go to the temples. I

subscribed to the *Parse Reeformer*, which contained articles abusive of the Maharajas. All I mean to say is that I have not seen gulal thrown at the temple of Laxmijee I do not know if it is thrown there. There are only six temples at Beyt under the control of the Gaekwar. Five of them are covered over with a roof. The court-yard of Laxmijee's temple is also covered over with a roof; it looks like a house.

To Mr. Scoble.—"I was not tried by Major Shortt, the Resident."

To Mr. M. Sausse.—I did not appear personally before Major Shortt; my man used to go to him during the enquiry."

(3.)—*Mitharam Purshottam*, examined by Mr. Scoble.—"I know the plaintiff, whom I saw at Beyt in 1907. I was a clerk of the Kamavisdar's Mehta, and was sent to the Maharajas who came to Beyt. I was sent to plaintiff, and used to accompany him when he visited the temples. He had put up at the house of Dwarkanathjee, and bore a good character as to chastity during his residence there. I used to attend him with four sepoys whenever he visited the temples. I never noticed anything improper in his conduct, though I stood close by him on such occasions. I have not heard of the existence of 'Ras mandlees.'

Cross-examined by Mr. Anstey.—"I first heard the name of "Ras mandlee" when the counsel mentioned it just now. The mansion of Dwarkanathjee is the same as that of Jagannathjee. Jadunathjee was the only officiating Maharaj at Beyt during the seven months I was with him. Vallabhjee Maharaj was not at Beyt at that time; I never heard anything up to this day against the plaintiff's character. I did not know him at any other place except Beyt. I came to Bombay

fifteen days ago: I heard today in Court that the plaintiff had been charged with adultery. I saw the last witness in Court this day: he was not Kamavisdar at Beyt during the time I was there. I would have disobeyed the Maharaj if he asked me to leave him alone at the temple's even for a few minutes. There were the Sirkars sepoys at his house; they would not have left him by his order.

Re-examined by Mr. Scoble—"It is since my arrival from Rajcote that I heard of the plaintiff's adultery, as alleged in the newspapers. While at the temples, the Maharaj never asked me to go out. The sepoys followed the Maharaj from room to room, and wherever he went. He slept in the store room: he was attended by sepoys even in his bed-room. He would not be left alone even for a moment; his personal attendants would not leave him even though he desired them to do so.

To Sir M. Sausse.—"The plaintiff was at Beyt in the month of February, and remained there ten or twelve days. I saw gulal thrown in the temple of Dwarkanathjee during the time the plaintiff was at Beyt. In no other temple is gulal thrown about. The Maharaj and the Brahmachari throw about gulal on the persons of the Vaishnavas Females and males, who pay a tax of nearly half a rupee are allowed to touch the feet of the idol.

To Sir Joseph Arnould.—"If the Maharaj be present, the devotees pay him the "darshan" after the image."

(4.)—*Raghowjee Natha*, examined by Mr. Scoble.—"I am a Bhattia of the Vallabhacharya sect. I have a Maharaj for my Guru. I saw the plaintiff at Beyt in the month of February 1851.

On the day I arrived in Beyt, the Maharaj left for Dwarka. While I was at Beyt, the Maharaj returned from Dwarka, and remained ten or twelve days. I visited the plaintiff frequently to make "darshan." I heard or saw nothing prejudicial to his morality either during his residence in or absence from Beyt.

Cross-examined by Mr. Anstey.—"I was at Beyt on a pilgrimage. I am quite sure I was not in Bombay at the time doing my business as a Broker. It is a sin to come and give evidence in this Court against the Maharaj or to divulge his secrets. I did not sign the "bundobust" against giving evidence here, whilst in Cutch.

To Sir Joseph Arnould.—"If Mathuradas Lowjee gave evidence against the Maharaj, he committed a sin. The whole world would say so; even the Mahomedans!

Witness is fined twenty rupees for not giving a direct answer to Sir M. Sausse.

To Sir M. Sausse.—"I heard that there was a meeting of the Mahajans held in Bombay.

To Sir Joseph Arnould.—"If there be anything bad against the Maharaj, I would tell it in Court.

To Sir M. Sausse.—"I think the Maharaj would never do anything bad. He is our Guru, and all the women are like his daughters."

(5.)—*Premjee Punja,* examined by Mr. Scoble.—"I am a Pokarna Brahmin, and have served in the temple of Radhajee at Beyt for fifteen or twenty years. I have known the plaintiff since he visited Beyt ten or twelve years ago, about the month of February or March. He visited the temple of Radhajee twice a day, always accompanied by his attendants. I observed no

improper or indecent conduct on the part of the plaintiff or the female worshippers in the temple. I heard no reports against him. It is not usual in our temple to throw gulal on the followers upon any occasion: in our temple, as well as in the temple of Laxmijee, gulal is thrown only upon the image. In the temple of Dwarkanathjee, gulal is thrown upon the musicians after the priests have thrown it upon the image. So far as my information extended, the plaintiff bore a very good reputation as to chastity.

Cross-examined by Mr. Anstey.—"I have not heard any report against Jadunathjee's chastity up to this day. I am a follower of Ranchodjee Maharaj of Mandvi; he is gone to his destination, to "lila" in heaven."

(6.) *Purshottamdass Dulabbhoy*, examined by Mr. Scoble.—"I was a resident of Surat for several years, and know the plaintiff. I knew his father also. During the time I resided in Surat the plaintiff bore a good character. I heard no reports against his chastity or morality whilst I was in Surat, nor since I have come to Bombay. I visited him in Bombay but saw nothing improper in his conduct.

Cross-examined by Mr. Anstey.—"I have never up to this day heard anything against the plaintiff's moral character, except that I was told three or four months ago that he was charged with immoral conduct in a newspaper. I heard that a meeting of the Mahajans was held for making a "bundobust" at the house of Jeevanlalljee."

(7.)—*Purshottamdass Dayaram*, examined by Mr. Bayley.—I am a Bania and a member of the Vallabhacharya sect. "I have been a resident of Surat for many years, and know the plaintiff. In Surat I have heard he bore a good character as

regards chastity. I heard that the newspapers here charged him with a great crime which he committed in Surat.

Cross-examined by Mr. Anstey.—"I never heard anything against plaintiff either here or in Surat. I came here four or five months ago, when I heard that the newspapers charged the plaintiff with immorality. I don't know if it is right or wrong that one should offer his wife to the Maharaj. I consider the Maharaj as my God, and it would be a sin to give any evidence against him.

Re-examined by Mr. Bayley.—"My respect for the Maharaj would not induce me to tell lies in Court. If I knew anything against him I would tell it.

To Sir Joseph Arnould.—"I do not know if the Maharaj can do anything wrong. It would be improper in him to do an immoral act."

(8.)—*Parbhudass Dayaram*, examined by Mr. Scoble.—"I am a resident of Surat and am the *muneem* of the firm of Ramdass Purshottamdass. I know the plaintiff, who bore a good character for chastity and morality. I have not heard any bad reports against him.

Cross-examined by Mr. Anstey.—"I get no letters from Surat except those connected with the business of our firm. I have been in Bombay for twenty-five or thirty years. I used to visit the plaintiff in Bombay. I did not hear before this action was brought that he was charged with immorality. Since the last two or three years I have heard rumours of the immorality of the Maharajas. I have never heard till this moment of the existence of the "Ras mandlees." I have drunk the water which is

distributed to the devotees in the temples. A Guru would not commit a sinful act.

To Sir M. Sausse.—"If a trustworthy person told me that the Maharaj committed a bad act, I would believe it."

(9.)—*Narranbhoy Vijbhukhandass*, examined by Mr. Bayley.—"I am a resident of Surat, and came to Bombay about two months ago. I knew the plaintiff, who is my Guru; I used to visit him once a day for ten or twelve years. He bore a good reputation for chastity and morality. I have visited him occasionally in Bombay. The plaintiff's father died in (Samvat) 1908. Plaintiff has established at his own expense a Sanscrit school in Surat,—no girls' school.

Cross-examined by Mr. Anstey.—"Jadunathjee told me that he had opened the Sanscrit school at his own expense. I never heard up to the day before yesterday any rumours against the morality of the plaintiff or any of the other Maharajas."

(10.) *Morarbhoy Vijbhukhandass*, examined by Mr. Scoble.—"I am a Bania shroff carrying on business between Bombay and Surat. I was the man who, on the day of the Royal Proclamation of 1858, released all the debtors in the Surat jail, by paying their debts. I know the plaintiff, who bore a good character for chastity and morality. I have heard no report against his morality, either in Suaat or in Bombay. I have seen nothing to diminish my respect towards the plaintiff. On my last visit to Surat, I did not hear that he had established a school there.

Cross-examined by Mr. Anstey.—"I have not heard anything against plaintiff or any of the other Maharajas as to their chastity. I never stated in the shop of Eduljee Framjee that the Maharajas commit immortal acts."

(11.)—*Mansukhram Khushaldass*, examined by Mr. Bayley.—"I am a *mooneem* of the firm of Gopalrao Mallharrao, and have come to Bombay since the last four years. I resided in Surat for four years, and knew the plaintiff in that city. I am a member of the Vallabhacharya sect. I went to the plaintiff almost daily for "darshan." He bore a good reputation for chastity and morality. I heard no *gap* or rumours against him; I should have heard of it if any existed. I have seen him in Bombay.

Cross-examined by Mr. Anstey.—"I do not remember Jadunathjee going to Beyt whilst I was at Surat. I never heard a rumour against this or any other Maharaj until a few days since this trial began."

Sir Joseph Arnould.—"Will you call the Maharaj, Mr. Bayley?

Mr. Bayley.—"I should call him if I think necessary. I am not called upon to pledge myself.

Eighteenth day, Monday, 24th February, 1862.

(12.) *Nanabhoy Karsandass*, examined by Mr. Bayley.—"I am a cotton dealer, and am a permanent resident of Broach. I am in the habit of going to Surat every year. I knew the plaintiff at Surat. I am a member of the Vallabhacharya sect. I never visited the plaintiff, but saw him going about. I did not hear anything against his character.

Cross-examined dy Mr. Anstey.—"I went once a year to Surat. I do not consider it a sin to tell the truth against a Guru. To-day is the first time I hear anything against the plaintiff's character. I never saw him in Surat.

(13.) *Narrottamdass Haribhoy*, examined by Mr. Scoble.—"I am the mehta of the Nawab of

Surat, and am a Bania by caste. I know the plaintiff, to whom and to whose father I went once a day to make "darshan." To my knowledge, the plaintiff's character for morality was good. I did not hear any reports against him. I know he has established a school in Surat; and I have heard that he pays its expenses. It was opened three or four years ago. A few months ago I heard it had four or five hundred pupils.

Cross-examined by Mr. Anstey.—"The plaintiff never visited me at my house. He left Surat about November last to come to Bombay. I heard about a year ago that some newspapers in Bombay and Surat published certain charges against his character Never before that had I heard any rumour against any of the Maharajas.

To Sir M. Sausse.—"One may spread a rumour against the character of a Maharaj, but I should not be satisfied with it. The Maharaj would not commit a bad act, by which I mean anything contrary to religion. The religion is contained in the books of the Vallabhacharya sect. I would consider it a bad act if one offered his wife to the Maharaj, &c., even though it may be enjoined by the religious books."

(14.) *Bhukhandass Kishordass*, examined by Mr. Bayley.—"I am in the service of Nusserwanjee Bamanji Bhavnagaria of Surat, and came to Bombay about a year ago. I am a member of the Vallabhacharya sect, and know the plaintiff, whom I saw very frequently at Surat. He is my Guru. He bore a very good character for chastity and morality. I heard no bad report against him.

Cross-examined by Mr. Anstey—"I cannot say whether or not the plaintiff had to leave Surat for some years by reason of the ill-will of the inhabitants towards him, in consequence of a bad act committed

by him. I am bound to him by the "mantra" (incantation) administered to me by his fathers. I do not consider it a sin to tell the truth against a Maharaj. I never told a lie in my life. I do not regard my Guru as god. It is not possible that the Maharaj would do a bad act. Until a month or two ago, I never heard a report against any one of the Maharajas."

(15.)—*Hargovind Moolchand,* examined by Mr. Scoble.—"I am a mehta in the firm of Maneckjee Bomanjee Cursetjee Cama and Co. I know the plaintiff, who is my Guru. I knew him for several years at Surat, where he bore a good character for chastity and morality. I never saw any impropriety on his part at the temple.

Cross-examined by Mr. Anstey.—"I do not know the age of the plaintiff. We swing the image; I cannot say if the Maharaj is ever swung in a swing. I do not regard my Guru as an incarnation of God. I have seen gulal sprinkled on the image in the temple. The plaintiff left Surat in 1851, but I do not exactly remember whether he stayed away five or seven years. I heard no report in Surat against any one of the Maharajas. I heard rumours in Bombay about two or three months ago, as alleged in the newspapers.

To Sir Joseph Arnould.—"I never heard that any Bhattia shetts were punished for coming to a resolution not to give evidence against the Maharaj. I simply heard that some Bhattias were litigating and were punished."

To Sir M. Sausse.—"The Maharajas being Gurus their conduct would never be bad. I would not believe a bad report against a Maharaj, for he would not commit a bad act. If any person told me that a Maharaj committed a bad act, I would not believe in him."

Sir M. Sausse suggested, with a view to economize time, that any further witnesses, whose evidence was in effect similar to that already given had better been simply submitted to cross-examination, as was done in some instances with the witnesses for the defendants.

(16.) *Kandass Dulabhdass*, cross-examined by Mr. Anstey.—"I heard no bad report whatever against the plaintiff in Surat. He is my Guru. According to my religion, his good conduct must be told, but nothing must be said of his bad conduct as a Guru.

To Mr. Bayley.—"The truth must be told without shame, even against a Guru.

To Sir Joseph Arnould.—"If there is anything bad against the Maharaj, it must be proved here."

(17.) *Balkrishnadass Umedram*, examined by Mr. Scoble.—"I am a shroff of Ahmedabad, and a member of the Vallabhacharya sect. I saw the plaintiff in Ahmedabad in 1848 or 1849: he resided there five or six months, during which time I went to him every second or third day to make "darshan." He bore a good character for chastity and morality. I heard no report against him.

Cross-examined by Mr. Anstey.—"I never heard in Ahmedabad of the elopement of a Maharaj with a young Brahmin female to Baroda. The first time I heard anything against a Maharaj was three or four months ago, through the newspapers. I have been in Bombay since the last five or six years."

(18.) *Bhaichand Keval*, exmined by Mr. Bayley.—"I come from Ahmedabad, and have been frequenting Bombay for the last three or four years. I saw the plaintiff at Ahmedabad in 1848 or 1849, and went to him once or twice a day to make "darshan." He bore a very good character

for chastity and morality. I did not hear any report against him.

To Mr. Anstey.—"I heard only two months ago bad reports against the plaintiff through the newspapers. I never heard before this a bad report against any one of the Maharajas. My Maharaj has not carried off any Brahmin lady; I do not know anything else. I belong to the Vallabhacharya sect. I heard that the temples were closed for eight or nine days in 1859. I did not sign the "bundobust" on account of which they were closed. I heard of the Bhattia Conspiracy Case on my return from Ahmedabad. We regard the Maharaj in the place of God, but he is my Guru. I regard him as an incarnation of God: and if he chooses, he can commit a sin. If he commits a sin, God will punish him. I would tell the truth even of a Guru. Five or six years ago, the Maharaj told me to make "darshan" and to take the name of God. My Maharaj is Kaniyalaljee who is at present in Kotah.

To Mr. Bayley.—I regard the Maharaj the same as the image, but less than Thakorji. I regard Thakorji as God."

(19.) *Bapoolall Mathuradass* examined by Mr. Scoble.—"I am a Bania and a member of the Vallabhacharya sect. I am a Mehta to a shroff, in Bombay. Until the last two months I was in Baroda, where I saw the plaintiff for about three months. I used to go to him every second or third day to make "darshan." There is a temple built by the Gaekwar for the Maharajas. The plaintiff is the Guru of the Gaekwar, who very highly respects him, and on his arrival in the city, sends out his sons with elephants, &c., to welcome him. The plaintiff bore a good reputation in Baroda as regards chastity and morality.

To Mr. Anstey.—"The Gaekwar is a Mahratta; I don't know of what caste he is. The Gaekwar is a follower of all religions, and respects everybody. It is true that he built a mosque some days ago, and, to please a Mahomedan fakeer caused all the hogs in Baroda to be killed at once. I never heard of the touching loves of Vallabhjee Maharaj and Tara, a Mahomedan female."

(20.) *Mansukhram Narottam*, examined by Mr. Bayley.—"I came to Bombay from Baroda seventeen years ago, and have frequently gone to the latter place on business. I saw the plaintiff at Baroda in 1904, and so far as I heard, he bore a good character for chastity and morality. I heard no bad report against him. I am a Bhattia by caste. The Bhattias of Baroda do not wear the same sort of dress as those of Bombay.

To Mr. Anstey.—"I heard people talk of the Bhattia Conspiracy trial; I don't know what the charge was in that case. Being a resident of Gujarat, I would not have understood the language and manners of the Bombay Bhattias, and therefore would not have attended the Bhattia meeting of 1855. There is no harm in telling lies for a good object. To save a Brahmin charged with murder, I would not tell a lie. I would not tell an untruth for even a good object. I consider my Guru as an incarnation of God, and accordingly bow to him. The Maharaj would not commit sin.

To Mr. Beyley.—"I had never my attention pointed to such questions as the incarnations of God, &c. I consider the Maharaj inferior to the Thackorji: he is so regarded by all Vaishnavas."

(21.) *Purushottam Parmanand*, examined by Mr. Scoble.—"I am a Bania merchant of Baroda, and at a present ship goods from Bombay. I saw

the plaintiff in Baroda in 1904; he bore a good character for morality. I observed no impropriety of conduct on the part of the plaintiff in the temple at Baroda during the time of worship.

To Mr. Anstey.—"We were very glad when the Maharaj came to our city and afforded us an opportunity of making "darshan." Our females and we all were very glad when he came and resided amongst us. I heard nothing against any one of the Maharajas before this action was brought.

To Mr. Scoble.—"How can I say whether or not it is a calumny on my sect, to say that any of its members offer their wives to the Maharajas. Nobody offers his wife to the Maharaj; it is false."

(22.)—*Nanabhoy Dayabhoy*, examined by Mr. Bayley.—"I am a resident of Surat I know the plaintiff from his infancy. I was at Shree Gokul Mathura when he came there on a pilgrimage in 1903. I arrived there when he was there; we remained there for about a month. I accompanied him to Baldevjee, and travelled with him for about a month. I used to be in his company when he visited the temples. He bore a good character for chastity and morality at those places. There were some forty or fifty people who formed his retinue, and whose expenses were defrayed by him. I heard no stories against his morality.

To Mr. Anstey.—"I was not with the plaintiff at Oodeypore. I don't know if he was prevented from touching the image in the temple there. On the pilgrimage, females used to visit him for "darshan" and touched his feet. He never presses with his toes the hands of females. It is the custom to touch the feet, not from below, but at the top. I did not laugh when you asked me of the cause which led plaintiff to leave Surat.

Sir Joseph Arnould.—O yes, you did.

Witness to Mr. Anstey.—"I simply heard that some Bhattias were fined in this Court for holding a caste meeting; not for making a "bundobust" against giving evidence in this case."

(23.) *Lalljee Natha* was called as the next witness, when Mr. Anstey stated he was observed sitting in Court during the trial.

Lalljee admitted he was sitting in Court one day.

Examined by Mr. Scoble.—"I met the plaintiff on a pilgrimage at Gocul Mathura about four or five years ago, and was with him for about a month and a half. He had a hundred or a hundred and fifty servants with him. His tent was pitched at some distance from that of his servants. The Vaishnavas, about a thousand in number, followed him in a procession from place to place. He bore a good character for morality, and I heard no report against him.

Cross-examined by Mr. Anstey.—"I was in Court during the examination of Drs. Bhau Dajee and Dhirajram. I did not sit in Court on any other day.

Sir Joseph Arnould.—If I mistake not, I saw this man in Court certainly for more than one day.

Mr. Anstey.—There are several persons who observed him.

Witness to Mr. Anstey.—"I have signed the "bundobust" made at the Bhattia meeting. I know eight persons were punished for making that "bundobust" which I signed because the whole of my caste signed it. I did not sign the "slavery bond" three years ago. I know the temples were closed for eight or nine days. I do not know if I was caricatured in the *Bagai Nasheat* newspaper

as a member of the "Ras mandlee." I don't know of a society of which Dayalbhoy is the chief: I know Dayalbhoy. By "Ras mandlee" I mean a dramatic representation of Thackorji. My partner's name is Mackonjee; I don't know of what society he is the principal member.

Witness to Mr. scoble.—"I did not understand anything of the evidence given by the doctors in English, whilst I was in Court. I did not hear the Crier give the order that day for witnesses to retire. I think it was this book (produced in Court) in which I signed my name. [It refers to the celebrated "bundobust" made at the Bhattia meeting.]

Mr. Anstey objected to the book being tendered in evidence, on the ground that it was not though demanded, produced at the trial of the Bhattia Conspiracy case, that the learned Puisne Judge's notes in that case would show that the "bundobust" was not wholly reduced to writing; and that the judge's notes were not admitted.

Mr. Scoble argued that he had a right to put in the book through the first witness who admitted having signed it, and particularly because the device was resorted to, to prejudice the mind of the Court against every Bhattia witness in this case by constant referrance to an unlawful "bundobust" which never existed, as the book would show.

Sir. M. Sausse remarked that the book might be referred to as containing the "bundobust which the witness signed; and Mr. Anstey would be allowed to cross-examine him.

Witness to Mr. Scoble.—"The "bundobust" in this book was read to the meeting before it

was signed by myself and others. There was no supplementary "bundobust," nor have I signed any.

Mr. Anstey was addressing the Court at some length against the admission of the book, complaining that there was no official translation to enable him to cross examine the witness, when

Mr. Bayley said it was not tendered or put in, as the official translation was missing and another copy was being prepared in the Translator's office.

Witness to Mr. Anstey.—"I saw Arrat Kirpal, one of the conspirators, reading from the book and giving explanations. I did not notice that the sense of the meeting was taken with reference to certain resolutions. I did not hear persons shut out. "We will do it." Kanjee Shamjee also addressed the meeting holding a paper in his hand, the contents of which I did not read or hear.

To Mr. Bayley.—"I did not sign any other "bundobust" but this, nor was I asked to sign any.

To Sir Joseph Arnould.—"My object in signing this book was not to assist any body; it was because the editors of the newspapers had published something about persons offering their wives to the Maharajas. Those who did not offer their wives were asked to sign the book; those who did offer, were told not to sign.

To Sir M. Sausse.—"I was not aware that witnesses in this case were ordered not to sit in Court. Before the day on which I came into Court, I had been sitting outside four or five days. I have received a subpœna in this case."

Sir M. Sausse.—"The Court has no doubt that the witness was perfectly aware of the order,

and sat there in contempt of the Court's order. The Court therefore fines him twenty-five rupees.

(24.) *Nandoo Jadhowjee*, examined by Mr. Bayley.—"I am a Bhattia, and serve as a muccadum. In the year 1903, when I left Mathura on a tour, I was in plaintiff's company for about a month and a half. I used to go about in the jungles: it is our religion to visit rivers, tanks, &c. I did so with plaintiff and with about eight hundred other persons. He had a separate suite of tents. He bore a good character for chastity and morality, I have not heard anything against him.

Cross-examined by Mr. Anstey.—"I was present at the Bhattia meeting held on the 6th September last. I am not aware of any resolutions being passed thereat. I cannot say that the witness (for the prosecution) at the Bhattia Conspiracy Case swore to anything but the truth. At the meeting, I signed in a book. Arrat Kirpal read from a book and gave explanations, of which I heard one word. On the day of the meeting, I went with the Madhowjee to the house of Jivraj Balloo, where Gokuldass Tejpal said to us that the adulteries of the Maharajas ought to be put a stop to. I said it was a matter for the Shettias to settle or make arrangements about it. I heard about four years ago of charges against the Maharajas through the newspapers. I never in my life saw an instance of impropriety on the part of any one of the Maharajas.

To Mr. Bayley.—"I heard a person crying out at the meeting, "If you send your wives and daughters to the Maharajas, then do not sign; but if you do not send them sign." Thereupon I signed."

Nineteenth Day, Tuesday 25th February, 1862.

(25.) *Bhimjee Purushottam*, examined by Mr. Bayley.—"I was present at the Bhattia meeting held in 1855. I rember that a portion of the resolutions, was that Bhattia women should not go about in their Garries without "purdas" or screens. It was also resolved that the women should not sit in the roads on the occasion of any death in the caste; also that they should attend early at the general caste dinner, &c. It was also proposed to prevent women from going astray on the pretence of visiting the Maharaja's temples; but that proposition was not acted upon. I am one of the twelve Shetts of the Halayee caste of Bhattias. I have seen a "Ras mandlee," a dramatic perfromance by the inhabitants of a village near Gokul Mathura. The performers are Brahmins; some of them are at present in Bombay. I don't know what is meant by "Ras mandlee."

Cross-oxamined by Mr. Anstey.—"I was present in Court during part of the examination of Mathuradass Lowjee. I was summoned last Saturaday (the summons is dated 23rd January last). I signed the "bundobust" in September last. It was not to the effect that it was better to give false evidence to the Court rather than that the Maharaj should lose the action. I did not agree to any such arrangement. I went to the Hon'ble Mr. Westropp to ask him to take in hand the Maharaja's case; but he said he had the Governor's business in hand and had no time. I went to the Bhattia meeting of September last about three hours after the business commenced. I am a resident of Porebander, and beleive a copy of the "bundobust" was sent for signatures there. I regard the Maharaj simply as a Guru.

To Mr. Bayley.—" A false charge was brought against me by some Subedars, but the prosecution abandoned."

Mr. Scoble put in the book of " bundobust," with the official translation, in connection with the evidence of Laljee Natha.

Shri Nathjee is true.

We the undersigned, all the Vaishnavas wearing the Kanthee* have jointly made this writing. The reason is as follows :—For some time past, most immoral calumnies have been published in the newspapers, against our religion, and our Guru, and our reputation. Our Maharaj Shri Vallabhacharyajee has composed a work (called) Sidhant Rahasya, and Bramhasambandh. Shri Gokulnathjee has made commentaries on this work, to enable us to understand it. Most of the Vaishnavas have most likely read these commentaries. But the meaning of those commentaries has now been reversed, and published to the effect, that one should make over even one's lawful wife to the Gosainji Maharaj before one has enjoyed (her) that one's sons and daughters also should be made over to them, that after one has married (a wife), and before he has enjoyed (her) one should make her over to Gosainji Maharaj, after which, one should take (her) for one's own use, that to this effect Shri Gokulnathji has made the commentaries, and that in the same manner, the Maharajas enjoy at present, the virgin and maiden daughters and daughters-in-law of their devotees. In this way a false rendering has been published. Therefore, any person, who may have been convinced is his mind, that this published account is true, shonld not put his signature to this writing. But

* A sacred necklace worn by the Vaishnavas.

it is resolved, that such persons only should put their signatures to this writing, as have been convinced in their minds, upon their true faith, that the publishers have falsely published these accounts. Because, these accounts of our religion have been published in a very improper way, and a very great slur has been cast on the character of all the Vaishnavas, the publishers thereof and their abettors will be asked (about them) according to the rules (or law). Therefore this writing has been made, in order to make arrangements (or to adopt measures) respecting the same, in some way or other, and to protect our religion and our religious preceptors and our proceptors' reputation. Therefore such persons, as may believe their religion to be true, should put their signatures to this writing. This writing which has beon made by us with our free will and pleasure, and in our second sense and understanding has truly been agreed to by us the undersigned, in our true faith. S. 1917 Bhadarva Sud the 2nd the day of the Friday. The 6th day of September 1861.

(26.)—*Damodar Madhavji*, examined by Mr. Scoble.—"I am one of the Shettias of the Bhattia caste, and carry on no business at present. I was present at the Bhattia meeting of last year, at which something was read out from a book. I dont recollect whether I was present at the Bhattia meeting of 1855.

To Mr. Anstey.—I am related to Lakhmidass Damjee, one of conspirators ! I signed letter sent to Porebander and other places, calling upon all true Vallabhacharyas to join the Bhattia meeting in supporting the religion of the sect against the libels published in the newspapers. Those who did not sign we would not have considered as members of our sect. I remember an action on

the Plea side of this Court brought against a Maharaj by one Maneckbai. She paid Rs. 1600 to the Maharaj, and the case was compromised. I have not squandered the property of Rattansee Dharsee. One of my gardens have been purchased by Jeevanjee Maharaj. I sent a man to Gokuldass Tejpal and Lakhmidass Khimjee to ask their permission to hold the meeting in September last. They replied that they would not join any meeting of the caste unless some arrangement was made to prevent the immoralities of the Maharajas. We rejoined that the object of the meeting to be held then was quite different. I was present at the meeting held at the house of Chimanlaljee Maharaj to arrange the preliminaries of the Bhattia meeting. Parbhudass, who manages this case, was standing at some distance from the meeting.

To Sir M. Sausse.—"I heard that the *Satya Prakash* was supported by some of the leaders of the Vallabhacharya sect. If any member of the sect held opinions at variance with those of the majority, he must remain isolated in his own house, and the sect would have no communication with him. I would not invite him to any caste dinners.

To Sir Joseph Arnould.—"I would regard as practically outcasted any persons who said that the Maharajas were guilty of wicked practices."

To Sir M. Sausse.—"I would regard as an outcaste any person who charged the Maharajas with immoralities. I would not speak to Gokuldass, Lakhmidass, Mathuradass, and others. I am a Marjadee (staunch devotee)."

(27).—*Devidass Asardass*, examined by Mr. Bayley.—"I am a member of the Vallabhacharya sect, and a native of Shikarpore. I saw the plaintiff when he was at Shikarpore about eight

years ago. He remained there about two months and a half. I used to visit him for "darshan." Any Maharaj I would regard as a Guru, being a follower of Vallabhacharya. He bore a good character for chastity and morality. I heard no rumour against him. I have been in Bombay five years."

(28.)—*Tullopchand Tejban* examined by Mr. Scoble.—"I am a resident of Multan, where I saw the plaintiff about eight years ago. I regard all Maharajas as Gurus. I used to visit plaintiff once a day for "darshan" He bore a very good reputation as to chastity and morality; every body went to him to make "darshan." I am a *muneem* in Bombay to Amirdas Chimanlal."

(29.)—*Kuttonmall Moolchand*, examined by Mr. Bayley.—"I am a resident of Hyderabad in Sind, and am a jeweller. I saw the plaintiff in Hyderabad five or six years ago; he resided four months there. There are many Vallabhacharyas in Hyderabad. I visited the plaintiff daily for three months in the house which he occupied. He bore a good reputation, and I heard nothing to his discredit.

To Sir Joseph Arnould.—"I went to make "darshan" to the plaintiff; there were no images there."

(30.)—*Parmanand Hemraj*, examined by Mr. Scoble—"I resided lately at Amritsar and am a native of Shikarpore. I know the plaintiff whom I saw at Amritsar ten or eleven years ago. He remained there ten or fourteen days. I use to visit him for "darshan." He bore a good reputation, and I heard no report against him. The plaintiff next proceeded to Multan and Lahore."

(31.)—*Ramdas Dhanoomall*, examined by Mr. Bayley.—"I am a native of Shikarpore. I saw

the plaintiff in Mandvie in Cutch, where he stayed four or five months. I visited him for "darshan." He bore a good character, and I heard no report to his discredit."

(32.)—*Nandram Shastri*, examined by Mr. Scoble.—"I am a Nagar Brahmin and a Purani. I know the books of the Vallabhacharya religion, and have read Gokulnathjee's commentary. This manuscript (produced in Court) contains the commentary; it was copied by me four months ago from an ancient document. I am a member of the Vallabhacharya sect. I got the ancient manuscript of the commentary from the plaintiff.

Cross-examined by Mr. Anstey.—"There are six sections of Nagar Brahmins, which are separate from each other since the origin of the Vallabhachara sect. These sections hold no communication with my section and with each other. There are about two hundred houses of my sect. It is not considered in the Shastras, particulary in the Bhagwat which contains the doctrines of my sect, an offence or impropriety to tell lies to save the life of a Brahmin or a cow, for the sake of marrige, &c., &c.

(33.)—"*James Flynn*, Chief Translator and Interpreter, deposed to having translated the commentary alluded to by the last witness. The translation was made from the copy, and not from the original.

(34.)—*Veljee Makanjee*, examined by Mr. Scoble.—"I am a Brahmin of the Sachora caste, and have been in the service of the plaintiff for the last fifteen years. I went with him on his travels, and was every moment with him. I accompained him on his visits to the temples, when four of the Sirkar's sepoys and a Karbhari attended him, as

also his own sepoys and a number of Vaishnavas. At noon, the females went to him for "darshan." No "darshan was allowed after six o'clock in the evening. During the plaintiff's residence at Beyt, women came for "darshan" up to the Maharaja's dinner time. They were always accompanied by some males. Males accompany females when the latter go to the temples at all places. Plaintiff had two rooms, one a bed-room and the other a cook-room, and he took his meals in the latter. There was a separate room to which only the followers were admitted. I never saw a female enter the bed-room. I did not see the plaintiff throw gulal upon any one at the temple of Luxmijee.

Cross-examined by Mr. Anstey.—"It is usual at the Maharaja's house to pay three rupees a month to servants of my class. I put in order the Maharajas clothes after he has taken them off. I do not leave him for five minutes. It is my custom to sleep outside the door when the Maharaj sleeps in his bed-room. I will suppress stooling if necessary; but will not leave the Maharaj alone. Even if he told me, I would not go ; not that we suspect him, but because some one must be constantly within call. I and the other servants are not procurers to the Maharajas. He is standing down-stairs, and is watched by one Choberjee.

To Mr. Scoble.—"At Beyt, the Maharaja's wife was not with him; she was at her father's. He has two children who, with his wife reside in Bombay at present. He has a son of seven years and a daughter of four. If the Maharaj did anything wrong I would tell him that, and also inform the people of it. I never observed any impropriety in his conduct. I get three rupees a month besides board and lodging."

To Sir Joseph Arnould.—"The Maharaj travelled continuously for five or six years during the whole of which time his wife was not with him."

The names of Jadunathjee Brijrattonjee Maharaj, the plaintiff in this action, was here called out by the Crier, and all eyes were strained in every direction of the hall of justice to see His Holiness coming in. There was a rush of persons in one part, but from the midst of them the hero did not come forth. The large mass of his followers in Court stood up in reverence to the Maharaja's shadow, and whispers of "he is coming" went round the lines of the spectators. The legal adviser rose up in meditation from his chair, and perhaps satisfied with an answer from the Crier, sat down again. A few minutes of intense curiosity and wistful glances elapsed, when two tall individuals entered the Court followed by the Maharaj and his attendants and admirers. His Holiness, supported on either side by Mr. Varjeevandass, Madhavdass, J.P., and others, was conducted into the witness box, in which he showed a wonderfully bold front considering the weight of the charges levelled against him. Jadunathjee is a young man of about thirty-five, of a well-knit and robust constitution, of a dark colour, and of a middle stature. He seems to have taken particular care of his whiskers, which were rather exuberant and shown to advantage. The swearing priest of the Court asked him to take the required oath on a sacred book, which was held out before him. Mr. Anstey wished him to take off his shoes, which he did. The Maharaj seemed unwilling to take oath on the book.

Maharaj to priest.—What is the necessity of making me swear on this book? I cannot speak anything but the truth.

Priest.—Do take the oath according to the Sirkar's regulations.

Interpreter to Court.—The Maharaj says he need not be sworn.

Maharaj.—I will make solemn affirmation.

Sir M. Sausse.—If he wishes his evidence to be taken, tell him he must take an oath on the book.

Maharaj.—I speak the truth all my life, but if the Court wishes, I will take the oath.

He then took the required oath. At Mr. Bayley's request the Court allowed him a chair to sit in while giving his evidence.

(35.)—*Jadunathjee Brijrattonjee Maharaj*, examined by Mr. Bayley. —"I am the plaintiff in this action, and am above thirty-five years of age. I have never been in a Court of Justice in my life before. To my knowledge no other Maharaj has attended in a Court of Justice. Besides Gujaratee, I know the Panjabee, Marwaree, and Hindoostanee languages, Urdoo more or less, Sanscrit for the most part, and the Brij Bhasha. I have seen those of the books of the Vallabhacharya sect which are necessary. I have opened a Sanscrit and Gujaratee school at Surat, the expenses of which are defrayed by me. One Shastri gives instruction in Sanscrit, and five or six teachers teach Gujaratee. Since I first came to Bombay I have taken an interest in female education. I first paid a visit about nineteen months ago to the "Mangaldass Girl School." It is the duty of all Hindus to go on pilgrimages, the length of which varies with the kind of pilgrimage and the place. I set out on a pilgrimage, and arrived in Beyt in 1907.

I visited twice a day the temple of Luxmijee. Gulal is thrown on the image in this temple. In the temple of Dwarkanathjee it is also thrown on the followers. I never threw gulal on the persons of the devotees at the temple of Luxmijee. How can I touch the breast of any female, when I regard all female devotees as my children? I never did so. I know Lakhmidass Khimjee, with whom I first became acquainted about two years and a half ago. I did not see him at Beyt in 1907. Any story he may have told against me is false. The last witness Veljee is my personal attendant, and was so on my pilgrimage. He is daily in my presence. It is the custom amongst all of my class to have at least three or four personal attendants constantly near them. I have visited Baroda, Gokul, Mathura, Amritsur, two Mandvis, Multan, and other places. I saw Gokuldass Tejpal and Lakhmidass Khimjee at Byculla where they came to me. I was married in 1905 or 1906 before I went to Shikarpur. I did not leave Surat because of a charge of rape against me My wife was not with me on my pilgrimage to Beyt. I have been subpœnaed by the defendants to give evidence here; I was served by a Parsee. I saw Gokuldass Tejpal on my first visit to Bombay; he introduced me to Lakhmidass. I first put up at Byculla when I came to Bombay two years ago. Lakhmidass invited me on one occasion when his brother was sick, and on another at the reading of the Bhagwat. I have some faint recollection of having authorized the publication of some articles in the *Chabook* newspaper. I did not tell Lakhmidass that the Maharajas were running away from Bombay in consequence of the articles in the newspapers or that I had come to conduct a debate with them. I asked him if this action would proceed in my absence from Bombay. I have done

nothing improper in respect to any female devotee in Bombay. I know Kallabhoy Lalloobhoy, and remember having seen him in Surat and in Bombay. (Denies another allegation of immorality.) As to making "darshan," thousands of males and females used to visit me. Adultery is most distinctly prohibited in our religion. It never formed the topic of conversation between me and Kallabhoy. He discussed with me about the authenticity and genuineness of the religious books. (Denies an allegation of immorality.) I don't remember having conversed with a doctor on the subject of adultery; I have never been guilty of it in my life. No female ever entered my bed-room whilst I was talking to Kallabhoy. Many females daily visit my wife and children. I had no conversation at Surat with Kallabhoy about touching the toes. He came and used to read with other boys a book for children which I caused to be written and printed at my expense. I assisted in its compilation. It is the universal custom for my followers to touch my feet; when I am sitting on a raised seat, the feet are touched from above and below, but when the foot is on the ground, it is touched at the top. Generally it is touched at the top. Kallabhoy said to me that all the Hindoo Shastras are false, and that he had become a perfect disciple of Narmadashanker. As I maintain and am convinced that the Shastras are true, he perhaps thinks I am therefore guilty of telling falsehood. Narmadashanker is a Nagar Brahmin of Surat; he holds opinions contrary to mine. I had no conversation with Lakhmidass or any one else about the Varkats, nor did I ever say to any body that they had corrupted me. I don't know what is the meaning of "Ras mandlee;" I know "Ras mandlee" and have seen it too. The latter is a dramatic representation, and there is nothing

indecent in it. When the deity is represented, we (Maharajas) get up for the time; other spectators continue sitting. The Vaishnavas worship me and other Maharajas as Gurus, those who cause happiness through God and are guides to him. I have not heard any one say that we are worshipped as gods. We are swung in a swing because we are Gurus. When any money or present is given to us in the name of God, we take it. The devetees regard us as Gurus, as guides to God; the Thackorjee is God. We spend from 3 to 8 or 10 o'clock in the morning, and from 4 to 6 o'clock in the evening, in the worship of Thackhorjee. The idol in the temple is regarded as the image of God. In no book written by Vallabhacharya is it inculcated that the Maharajas are to be worshipped as Gods. I am acquainted with Gokulnathjee's commentary; I allowed Nandram Shastri to copy it. It is considered a book of great authority by us and by all the Vaishnavas. The first Vallabhacharya is regarded as the incarnation of the head of God; he lived about 350 or 375 years ago. He was the disseminator of the opinions of Vishnu Swami. Our faith is not opposed to the doctrines of the Veds and the Shastras. In my school at Surat, Sanscrit grammer is now being taught. The manuscript of the commentary referred to, was found in my house and was the property of my father, who died in 1908. It is more than a hundred years old. I have read it. The Purushottam referred to therein is the God of all gods, the Supreme Being. What is therein stated to be offered to God, is stated in the defendant's article to be offered to me and the Maharajas. The sense of the original is perverted by the defendant. "Tan, man, and dhan" are directed to be offered to God. It is not inculcated in that commentary or in any

other book of the sect, that one should offer his wife and daughter to the Maharaj. I have not heard that any of my followers believes in a book containing such doctrines.

Twentieth Day, Thursday, 27th February, 1862.

Jadoonathjee Brijrattonjee Maharaj, further examiued by Mr. Bayley.—"I kuow Dr. Bhau Dajee. Since my arrival in Bombay he did not attend me professionally. He came to visit me once, in company with Lakhmidass Khimjee. I saw him on one occasion when I visited a girls' school. I was sufferiug from itches when Dr. Bhau visited me. because I had taken heating midicines when I was sick. I have suffered from eruptions occasionally. Some of the heating medicines were prepared by myself, and others by a native doctor When Dr. Bhau came to me I told him I was subject to itches and described my case to him, and told him I had taken heating medicines. The word "chandee" was not used at all by either of us. I asked him to prescribe some medicine for me. I never suffered from the venerial affection. The next day I sent Goverdhandass to Dr. Bhau to get back a manuscript book for girls' school, which I had prepared and given him for an inspection. I asked Goverdhandass at the same time to bring any medicine which Dr. Bhau might give. I did not tell him (Dr. Bhau) that the story of the disease would be communicated to him the next day, and applied my own medicines. I know Dr. Dhirajram Dalpatram, whom I saw at the exhibition of, I believe, Mangaldass Nathoobhoy's school. I consulted him and took the medicincs he gave. I described my case to him in the same manner as I had described it to Dr. Bhau. He prescribed some pills and a powder for me. The colour of the powder turned black

when it was mixed with water. He came for six or seven days for treating me; and also on other occasions. He is a Vallabhacharya. Since my acquaintance with him, he visited me often. I convened a meeting to discuss the question of widow remarriage ; in consequence of a note addressed to me by Narmadashanker, I attended the meeting, but expressed no opinion on remarriage, because other and irrelevant subjects were mooted for discussion and were discussed. The subject of remarriage was not discussed. I said some Shastra must be fixed upon as an authority upon the subject of remrrriage. Narmadashanker said the Shastras may be followed when advisable, or not. I said we must acknowledge all the Shastras; and my opinion was that, if the Shastras allowed, remarriages might take place, but not otherwise. I have seen no authority in the Shastras for remarriages. But I have no objection pessonally thereto. In my sect remarriages take place, and I don't prohibit them. Lakhmidass was present when Dr. Bhau visited me ; he was sitting by and heard what I said. I had no further conversation with him on the subject of the disease. I did not confess to him anything prejudicial to my chastity or morality. On the same occasion, I did not speak to him about the practices of other Maharajas. I have seen no instance of improprieties on the part of any Maharaj. I did not tell Lakhmidass that I did not commit such enormities as I did before. I did not tell him that any improvement in the practices of the Maharajas must be gradual, and cannot be made at once; nor that our income is chiefly derived from females. I told him I intended to go to Shrijee Dwar, but not that I had fears of my life there. I have caused a plan of my premises to be prepared. Thousands of females

go to the zenana, passing on their way through the "deevankhana." There are two doors to the "deevankhana," one leading to the zenana and the other to the staircase. On the left side of the "deevankhana" is a room in which my clothes and water are kept. There is another room at a few cubits' distance, in which the other Maharaja's furniture and goods are kept, and which is closed.

Cross-examined by Mr. Anstey.—The room last mentioned is incharge of Chimanjee Maharaja's servants. One of the two staircases is closed, and is also in the charge of Chimanjee Maharaja's servants. I am a man, and not a God. I am a man and a Guru to my followers. I am not an incarnation of the Deity and I am not aware that hitherto any of my followers has ever regarded me as a God, or an incarnation of God. Our Acharyjee is regarded as an incarnation of God, and we are regarded as his descendants and Gurus. I do not remember whether Karsondass Nensey once addressed me as "Ishwar," God. I and other Maharajas are not addressed to as Maha Prabhu, or Purushottam, or Dev; we are called the children of Maha Prabhu. Vallabhacharya and his son Gosainji are regarded as incarnations of God but not so the sons of Gosainji. The Maharajas are styled Vallabh Dev (Vallabh the God). The words Agnee-swarup (form of fire) is not applied to us. The title of Purn Purushottam (perfect God) is applied to the Maharajas. I held no meeting at 10 o'clock on Tuesday night to consider what answers I should make. Parbhudass did not tell me I should say "I don't recollect." The words referred to above are applied as titles to the Maharajas in books inaccessible to such followers as understand Sanscrit. I have taught my devotees that they should

regard us as Gurus, not as Gods. This book contains the names and pictures of Vallabhacharya and two of his immediate descendants. Vaishnavas worship these pictures. No Maharaj of the name of Dowjee is worshipped; he was the proprietor of one of the principal "gadees" (seats). These pictures are sold in the bazar for purposes of worship by the Vaishnavas. In the garden in which I put up there is a seat to which people resort for "darshan." I don't know if it is the seat of Dowjee. I have seen a seat of Dowjee in Surat. The name of Krishna occurs in a portion of the Veds. (Witness is examined as to the extent of his knowledge of the Veds and Purans.) There is sin in telling lies even for a good purpose. (Witness is handed a copy of the Bhagwat and interprets a passage therein.) Untruth may be told to women in sport, on occasion of marriages, when life is in danger, when a cow is to be killed, &c.; any one who tells lies on such occasions is not to be despised, but he commits a sin nevertheless. Since the rising of the Court I had no consultation with Varjeewandass and others. I believe every thing mentioned in the Bhagwat. The Shastras of the Vaishnavas are in accordance with the Veds. I have not published any pamphlet; no periodicals were published by the Vaishnav Dharma Sabha, which were written by Govardhandass. I was the originator of the society. Hariraijee was a Maharaj; I cannot say if he wrote any books in the Brij Bhasha. I cannot say whether a few Maharajas only can read Sanscrit. The wives and daughters of the Maharajas read books in the Brij Bhasha. I am unable to say whether this book (the Vachanamrit in Brij Bhasha) is considered a religious book. I have not read up to this time any work in the Brij Bhasha relating to the Valla-

bhacharya religion, with the exception of songs in praise of the Creator. I mean to say that I have never in my life read a theological or philosophical work in the Brij Bhasha on the Vallabhacharya religion. I now remember I have read in Brij Bhasha one of Gokulnathjee's commentaries. I do not read books of my sect in the Marathi language. I know Govardhandass wrote an essay in the "Propagator of our own religion" on adulterine love, in the opinions expressed in which I agree in the main. I did not tell him to write that essay. It was written in reply to an article in a Marathi magazine, but I cannot say if it was in reply to the libel in the *Satya Prakash*. I cannot say whether it is the belief of my sect or not that the *gopees* loved God as their paramour and that God loved them and made them happy. (Witness was asked as to several of the doctorines of the sect, mentioned at length in the pleas, whether or not they were believed in by himself or by his sect. Several of the questions he said he was unable to answer without reading a great portion of the context in the books in which the doctrines were mentioned.) The writer of the essay understands his subject, and I think it contains upon the whole, a fair exposition of the doctrines of the sect. Whatever is stated in the Shastras, is acceptable to me. Besides the sacred books of my sect there are other Shastras *viz.*, the Bhagwat, the Purans, &c. The young maidens of my sect swing Krishna in a swing. God Krishna is their father, husband, lord, &c. They swing me and the other Maharajas as a Guru. We are swung by our fathers, mothers, sisters, and all devotees; but I do not recollect whether we are addressed to as the amorous Kann (Cupid). These amorous songs are addressed to the Maharajas. (Reads and interprets passages in Sanscrit in Gokulnathjee's

commentary.) Since the last two or three days, I have been subjected to surgical examination by two or three medical gentlemen. My face was not covered when one of them saw me. I don't know if one of them refuses to give evidence that there is no trace in me of the venereal affection. They examined me from a short distance. I don't know their names, and I have not been told that only two of them are coming to give evidence. Varjeevandass Madhavdass, J. P., and Calliandass, Mohandass, his nephew who conducts this case, might have brought the doctors; I don't know. The examination took place in the shop of Raghu Shamjee, one of the conspirators.

Twenty first Day, Friday, 28th February, 1862.

Jadoonathjee Brijrattonjee Maharaj, cross-examined by Mr. Anstey—"Since my cross-examination yesterday, I have not been again inspected by a doctor. I did not ask Dr. Dhirajram to send me calomel from time to time whenever I wanted it. Once I put calomel into *chunam* water and made a blackwash of it, and applied it. Dr. Dhirajram told me to take a pill twice in the day, and I took five or six pills. I have purchased now a glass scale for use in taking photographs; I had none for measuring medicines. When my throat became sore a preparation of borax was given me as a gargle. I had sent for some iodide of potash and sarsaparilla. I tried the former; the latter I administered medically to another person. I have heard the name of Brahma-vivarta Puran; I have not read it; it is believed in by the Vaishnavas. (Witness is shown a passage in the book.) It runs thus: Upon having seen the "Ras," the mistresses of the God were tormented with the arrows of love; upon having performed the "ratee-ras" Krishna, the perfect

and perpetual along with Radha, went to the waters of Yamoona; with the gopees went the magical forms of the exalted Krishna, which, tormented with the arrows of love, and pervaded with joy, performed sport with the gopees in the water." The translation is correct, but I am not quite certain of the meaning. I must collate the passage with other books. (Witness is shown another passage.) It appears to be addressed to Radha, Krishna's principal mistress, as follows:—

"Why dost thou weep, O Radha! remember the lotus feet of Krishna; during the Ras mandlee night thou wilt perform with Krishna the desired uninterrupted rattee." I know the Vishnu Puran; I may have seen a passage in it here and there I don't remember having read the following passage;—"Whilst frolicking thus with the *gopees*, they considered every instant without him a myriad of years, and without the fear of their husbands, fathers and brothers, they went forth there to perform sport at night with Krishna." The Vaishnavas read the Vishnu Puran, not because they contain descriptions of the sports of Krishna with the *gopees*, but because they contain Vaishnavas' doctrines. We worship images of Krishna with the faith we are actually worshipping Krishna. He is brought into the images partly by ceremonies, partly by faith. The images of Krishna are represented as if he were in the infantile state. I have never seen him in the young or old state. (Witness is handed a picture of Krishna, at the top of a tree with the naked gopees at the foot of it.) He is here represented between the ages of 5 and 11 years. When the Maharaja dies, persons say he is gone to his abode, or to the world of gods. Krishna, when he died, went to

the Gowlowk; religious and pious Vaishnavas go there also. He (Krishna) remains all day in joy; the Vaishnavas are present there in his service. I have not observed in any book if it is the doctrine of my sect, that true Vaishnavas, after death, become gopees and have amorous and improper intercourse with God. I do not believe in this doctrine, nor am I aware if any of my followers does or do believe in it. By "lila" I understand sport, play. I believe it is impossible that Krishna should renew, in paradise, his amorous dalliance with the gopees; he may engage in "Ras lila" with them. The gopees are there in human form, but are not subject to early decay.

Sir M. Sausse.—I hope, Mr. Anstey, you are done with the theological part of the examination.

Sir Joseph Arnould remarked that the subject might well be taken up for a theological discussion between Dr. Wilson and the Maharaj outside the Court; but as it was, the Court could not be made the arena for such theological discussion. The question now was as to the libel.

Mr. Anstey.—I am near the end of this part of the examination, my Lord.

Witness continued to say.—I "am forbidden to repeat here the "mantra" pronounced at the "kanthee" ceremony. The translation you give of it is correct. The dedication referred to in this "mantra" is caused to be made at the feet of Krishna not to the Maharaj. The Guru at the ceremony is only the guide to Krishna. (Witness is examined as to the meaning of another passage. I asked Lakhmidass if an action might go on in the absence of one of the parties. When I first arrived from Surat, I had no intention of bringing an action against those who published anything against the Maharajas. The reason for the delay

of six months, in bringing the present action was that I am not acquainted with such matters in this island, and found it necessary to consult and take advice. (Witness is shown a passage of an article published in the *Satya Prakash* on the 9th September, against all the Maharajas.) When all the Maharajas are libelled, how could I alone bring an action. I do not remember if I consulted Mr. Leathes about this article. I do not remember if I read it; I heard that all the Maharajas were libelled, I cannot say if it was in consequence of this article or not that a handbill was published with my name to it, what is stated in the handbill as to the lessening authority of the Maharajas accords with my view. The words "Asatya Prakash" in one of the numbers of the "Propagator of our own Religion" refers to the defendant's paper; I think it is an error of the printer, or the letter "a" (not) may have fallen in by mistake near the word "Satya." I don't know if this article in the magazine was written in answer to the libel; I cannot say without reading over the whole of it.

Sir M. Sausse.—Now tell this witness the manner in which he has been giving his evidence latterly, is such as to impress the Court with an unfavourable view regarding it. He must be able to answer without reading over everything about which he is questioned.

Witness.—"I cannot answer without reading it over!

Sir M. Sausse.—The man has too much intelligence and collected manner not to recollect or to know what he says he cannot answer.

Witness continued.—"Then the article may be in answer to the libel. I have read part of the book called the "Debauched Guru."

It refers to "Ras mandlee." I have read the article containing the libel; it reflects upon me. The article says, "You Maharajas, acting up to that commentary, defile the wives and daughters," &c. This is libellous, though not directed against me individually. Being charged with the immoralities of the "Ras mandlee." I do not consider it libellous, because I do not understand what "Ras mandlee" means.

Witness proceeded to say.—"The book of Hariraijee is in Sanscrit. I have never seen it in Brij Bhasha. I have heard of a work in Marathi by Janardhan Ramchandarjee, entitled Biographies of Eminent Men." The story of the 252 and of the 84 is not considered a book of authority in our sect. This book of songs was not published by me, nor do I know if it was published by Govardhandass.

"I don't know if it is a libel upon the defendant. The representation of a Maharaj drawing a triumphant chariot over the prostrate bodies of the reformers does not refer to me; the printer must know who the Maharaj is.

Maharaj.—No one should touch me.

Sir M. Sausse.—"I saw no one attempt to touch you.

Maharaj.—"I am afraid some of the persons going from behind might touch me.

Mr. Anstey.—Why should you not be touched? I am not going to touch you. You are not a God. As for me I won't touch you with a pair of tongs. Mr. Hastings has already touched you the first day.

Witness proceeded.—"The chief temple of our sect is that of Shreenathjee at Kankrowlee. An image thence was not stolen by my father

or grandfather; my grandfather sat on the "gaddee" at Surat. There was a suit about the gaddee which was litigated in England. I have never gone on a pilgrimage to that tepmle, although I was seven years abroad. The Maharaj receives presents and contributions from the Vaishnavas. Fines are also levied, the money received by way of fine being eventually applied to the use of the Thackorjee. I am not a Brahmachari; I was one before my marriage. I am not a Sanyasee. I believe in Poorn Purushottam, who is one. Poorn Purushottam (perfect God) is applied as a title to the Maharajas, as "My Lord" is applied to the judges. I don't know if the Gurus of other sects are swung in a swing like the Maharajas. I have never seen the water from a Maharaj's *lungotee* rinsed and drunk by the Vaishnavas. The "joothan" (remnants of food) left by the Maharajas is eaten like that of all other Gurus. It is the custom in all sects of Hindoos. It is written that the Brahmins should partake of the leavings of Gurus food. I don't know if there is a prohibition in Manu. We give for the purpose of being thrown away the leavings of our "pan soparee." They may be eaten by some persons. The Maharaj applies his foot to the eyes of a dying person to relieve him from sin; no fee is paid for this. I don't know if the Gurus of any other sect do this. Males, females, and children apply and wash with saffron water and scented oils the bodies of the Maharajas. I don't allow my followers to eat the dust of my feet: I don't know if other Maharajas allow it. Lights are waved round the Maharajas heads. All this is enjoined in the Shastras; I don't know what Shastra. The wooden shoes of my ancestors are worshipped as also of other Maharajas. My shoes are not wor-

shipped. I do not go into private rooms to receive presents of fruit and sweetmeat from female devotees. I don't know if others do it. Vaishnavas bring them and present them to the Thackorjee and we then receive them. I don't know if other Maharajas go into private rooms for this purpose. Female devotees do not sing songs of a licentious character in the presence of the Maharajas; songs of various kinds are sung. Gulal is thrown by Maharajas on the persons of all devotees, not expressly on the persons of females. The Guru is to be worshipped in the same way as the image of Thackorjee, which represents God. I have not read in "Guru Seva" that all the Vallabhacharya Gosainjees are to be considered as incarnations of God. Ever since I arrived at a proper age I have told my followers not to believe in this doctrine. Before my admonition, the doctrine was believed in. It was believed in by some persons in Bombay, not the majority. I cannot remember the names of any one person whom I instructed not to believe in the doctrine. Did I say yesterday that I did not know whether any one regarded the Maharajas to be incarnations of God? Perhaps I did. I did not know if I swore to that effect.

Sir M. Sausse.—Tell him the Court has taken down clearly what he said.

Witness.—"I don't recollect it.

Sir M. Sausse.—O, his memory is very short; but the Court has taken down exactly what he said.

Witness proceeded.—"The Vaishnavas believe their obligations to their Gurus to be greater than their obligation to God. The Vaishnavas are not allowed to touch the image; and they can make offerings through the Maharajas or the Brahmins who bathe or wash their bodies inside

the temple. I believe that by *Brahma-sambandh* the sins of the eleven organs (including those of generation) are washed away. I don't know if it is the doctrine of my sect that Vaishnavas should not divulge the secrets of the Guru. It is good among other things, not to see the faults of others. I am a Brahmin; you may think I have not the physical appearance of one. My ancestors were Tellinga Brahmins; they were not excommunicated. We take their daughters in marriage, but don't give any. With reference to Telinga Brahmins in this country, we intermarry with them. I don't know if they are very poor; they are called Bhatjees. They are not excommunicated for giving their daughters to the Maharajas. Sometimes we find it necessary to give sums of money when the parents of the bride are poor. Manu prohibits the selling of daughters; I don't know of any prohibition against selling marriages. I believe the Maharajas to be innocent of adultery; if they are guilty thereof, they don't deserve the rank of Gurus. Krishnaraijee, my cousin, has married the daughter of a Tellinga Brahmin. I don't know of any scandals about him and a widow devotee. I don't know if his son Gokuloochewjee was expelled by a Rajah from his territory. Wallabhjee Maharaj was expelled by the other Maharajas, for interfering in a dispute between a father and his son. I don't know of any scandals connected with him. I was the first Maharaj to go to Damaun, I went there through ignorance. There is a prohibition made by Maharajas against going there. I don't know if the reason of the prohibition was, that a Maharaj was killed under the lash for larceny by order of the Portuguese government. Vittleshjee Maharaj was under surveillance at Patna; he was accused of sorcery; I don't know if he was accused of

poisoning the Raja; I don't know of Vrijpaljee Maharaj looting the houses of his devotees at Lakhpat Bander. I left Surat on a pilgrimmage for seven years. There was no charge of rape ever made against me. I hear it this moment. I don't remember if I was asked about it the day before yesterday. I have heard of the daughter of Pitamber Popa. There was no charge against me of having defiled her. I was not taken before the Surat magistrate on that charge, twelve or fourteen years ago. I have no knowledge of such a charge having been compromised for me by the then Sheristedar of Surat. I have not summoned any brother Maharajas to give evidence on my behalf. None of the Maharajas intimated to me that he cannot deny the adulteries of the Maharajas in this Court because the fact is too notorious. The son of one Maharaj is at present in Bombay except myself; all other Maharajas have left Bombay. I don't know of a disturbance near Jiwanjee's temple three months after my arrival in Bombay. I don't know Luxmibai, the daughter of Thawar Mulji. I did not know her fifteen years ago. Up to the time of the discussion on the subject of remarriage, I was on good terms with the defendant, who praised me in his newspaper. I did not prohibit the Vaishnavas from subscribing to defendant's paper. I don't know of having published any handbills against the *Satya Prakash* being subscribed to. I have heard of the Bhattia conspiracy case. I have not arranged with the other Maharajas to shut the temples against those Vaishnavas who might give evidence against me in this case. I don't remember if Parbhudass told me that he managed the Bhattia case. I either heard or read somewhere that Parbhudass took some message to one Gopaldass, and that the latter

gave evidence of the visit and the message. I heard also a rumour to that effect. I first spoke to Parbhudass on the subject during the trial of the Bhattia conspiracy case. Parbhudass came to me to Surat to call me here. I spoke to him then. He told me of the "bandobust" which was made here. I said "what is the necessity or object of making this "bandobust"? He said they must know. I did not authorize him to conduct or assist in the management of the case. There were no consultations between the nine conspirators at my house. One or two of them came to my house. The bundobust was in reference to the offering of virgin daughters, but I don't know for what case it was. I heard of the Bania bandobust from a number of persons who came to me and said what they had heard in this Court. I never reproved Parbhudass for his part in the making of the bandobust; he did neither right nor wrong. I believe what Lukhmidass has stated against me must be false; because if he saw me commit any immoral act, he would not have continued visiting me. I have never been guilty of adultery or immoralities. I took the heating medicines at Hyderabad where I was sick. I took dry ginger, black pepper, chillies, &c., and these produced internal heat. With the exception of six or seven months, my wife was with me on my pilgrimage. About four or five years before 1909, I travelled without the society of my wife, who had then died.

To Sir Joseph Arnould.—"Neither of my wives were with me at Beyt.

To Sir M. Sausse.—I once travelled five years, in the course of which I went to Jeypore to call my wife. I was away from Surat for two years in the course of which I proceeded to Beyt.

I have married two wives. I married before I set out for Beyt, and was away for two years from my second wife, who was then of the age of *nine or nine and a half years.* She came to live with me at the age of thirteen.

Twenty-second Day, Saturday, 1st March 1862.

Jadunathjee Brijrattonjee Maharaj, re-examined by Mr. Seoble.—"There was no meeting held at my house on Tuesday evening for the purpose of a consultation. It is a common from of salutation among Hindus to apply to each other, at a meeting, the names of Ram and Purushottam, although they may not be the real names of the persons addressed to. (Mr. Scoble said he was addressed to by the names *Purushottam* when in Gujarat) There are two seats of Dowjee, who established them and also worshipped them in common with others. All the sacred books of my sect are in Sanscrit; they are regarded as authorities even in Brij Bhasha, if they correspond with the Sanscrit originals. All the Maharajas are ex-officio Presidents of the Vaishnav Dharm-prasarak Society, or the Society for the Propagation of the Vaishnav religion. Since my arrival from Surat, I have made exertions to propagate the Vaishnav religion. I was asked in reference to the specific offence of several Maharajas; I heard them for the first time in Court yesterday. I have heard of those offences through several prints also; not of my relatives in particular, but of the Maharajas generally. I heard of the charges, for the first time yesterday, brought against the Maharajas by name. The "Debauched Guru" is not a book of authority in my sect; it is a lampoon. It is believed in by persons who are our enemies. The Maharajas

have authority to outcaste any one from the sect, with the approval of the members of the sect. Without such approval, no one can be excommunicated. The Maharaj has power to prevent a person from coming to the temple over which he has jurisdiction. All the Maharajas can combine to prevent a person from coming to any of the temples. Such a combination, however, has not taken place within my knowledge.

To Sir M. Sausse.—"I have said that adultery is a great sin according to the Shastras of my sect. The recommendation in the essay, already referred to, which I approved of, is not to commit adultery, but to love God with love akin to what is called adulterine love. Adulterine passion is intense love, and the same intensity of love should be shown towards God. Such love towards God is very good; towards a strange woman, it is bad. Such an illustration is given in the Bhagwat.

Sir M. Sausse.—Tell him that we are under the impression that, when asked before, he could not name any Shastra which contained such an illustration.

Witness.—"I do not remember.

Mr. Anstey.—I asked him several times, and he could not name any.

Witness to Sir M. Sausse.—I believe it is stated in the Bhagwat that love should be entertained towards God akin to the love of the *gopees*.

To Sir Joseph Arnould.—"I said that God is to be gained by worshipping him in any form or manner.

Maharaj (on retiring),—"I bless your Lordships"!!

The examination of witnesses closed here.

Mr. Anstey addressed the Court on behalf of the defendants. The learned counsel stated that his clients had been placed in a difficult position, as by far the great part of the evidence which had been given for the plaintiff had been kept back until every one of the defendants witnesses was called and every document was put in. The defendant had not, therefore, the opportunity and the advantage which the plaintiff had, to call witnesses on their behalf to contradict the enormous mass of falsehood which it would be the duty of the learned counsel, in the course of his observations, to unravel and lay bare. The circumstance, however, would not escape the Court's observation, that the witnesses whom the defendants had called were men of position and respectability, and who would therefore claim, in the decision to which their Lordships might eventually come, a much greater weight for credibility than the unfortunate devotees of the Maharajas who had been drawn from the lower classes of society. This was the third time the learned gentleman had the honour to address the Court on the principal features of this case. On the first occasion, in the demurrer case, when one of their Lordships was present, he (Mr. Anstey) showed that the very libel itself being considered, it was impossible for the plaintiff to support his plaint upon a general demurrer. The result was, that though, with respect to nineteen-twentieths of the alleged libel, the Court thought there was, no cause for calling upon the defendants for a justification, yet that there was a sufficient case in the eight or ten lines in the concluding part of the article. Mr. Anstey would not revert to all the arguments he addressed to the Court upon that occasion. It must be remarked that this action was brought by a

person professing a different morality aud different doctrines from Christian morality and Christian doctrines, and what the learned counsel urged was that the precedents of English law which it was sought to apply to this case, can have no universal application.

Mr. Scoble contended that the learned counsel must confine himself to the rebutting evidence.

Mr. Anstey said this was impossible from the very nature of the case, and it was impossible to draw a line of distinction between the portions of the evidence.

Mr. Scoble insisted upon his learned friend confining himself to the evidence offered in rebuttal. He had shown no case or cited no authority for going over the whole of the evidence.

The Court decided that Mr. Anstey ought to confine his observations to the rebutting evidence.

Mr. Anstey submitted that the principal points and doctrines in the case were so involved one within the other, that it would be really impossible to draw the distinction.

Sir Joseph Arnould suggested that the distinction might be drawn this way. Mr. Anstey would address the Court upon the evidence for the defence and the rebutting evidence, but not upon what he might have spoken about in the speech for the defence.

Mr. Anstey said this was just the course he intended to take. In commenting upon the rebutting evidence, he would allude to, and remark upon, the evidence which it was supposed to rebut. And first, he must refer to the points which were affected by the evidence. He thought one of these points was, to use the words of one of their Lord-

ships in the course of the trial, that there is no standard by which we may judge of the plaintiff. In the rebutting evidence, he had tried to set up one, which, however, it was impossible for the Courts of the English law to act upon. The learned counsel's first proposition was, that the plaintiff has no right to sue; and second, that, if he has a right, there is no libel upou him in what the defendants have published.

Mr. Scoble again applied to the Court to confine Mr. Anstey to the rebutting evidence.

Sir Joseph Arnould remarked that the question of a justifiable occasion was still open to the defendants; and Mr. Anstey had thought it proper to address himself to two propositions: 1st, that the doctrines of the sect being such and such, the plaintiff had no right to sue for redress for the enunciation and publication of those doctrines by the defendants; and 2nd, that even if he has the right, there is no libel.

Sir M. Sausse observed that the Court had already directed the counsel to restrict himself to the rebutting evidence.

Mr. Anstey said he had every intention to attend to the direction of the Court; and that much time would be saved if the officious and useless interruption by the counsel for the plaintiff was not repeated.

Mr. Scoble said he never heard such expressions used by one member of the Bar towards another at the Courts where he practised before coming to Bombay; and he would take the opinion of the Court whether his objection was such as to be called officious and useless and by other similar epithets. He had equally with the counsel for the defendants a duty to perform to his client, and he would ask the Court whether a legal argument

was admissible in a rebutting case. He had to learn from their Lordships, whether general observations on law were to be allowed in answer to a rebutting case.

Sir M. Sausse observed that the learned counsel for the defendants had given an assurance that he could, *bona fide*, support the observations he would make by the evidence and the Court gave him credit for that assurance, taking it for granted that he would sustain his propositions by referring to the rebutting evidence. With reference to the objection made by the plaintiff's counsel, his Lordship certainly did not think that he deserved to be censured with the words which had been made use of. It was proper and becoming in him (Mr. Scoble) calmly to raise such objections as he thought were necessary for the benefit of his client.

Mr. Anstey then proceeded to say that the position in which the plaintiff sued is a position offensive to the laws of nature and of natural morality. The doctrines he professed and taught were horrible to think of; he preyed upon the blind ignorance and credulity of his followers, and in the prosecution of his unholy ends brought his peculiar Shastras to his aid. The practices of this and other Maharajas became a matter of notoriety, and were considered unendurable even by members of the sect. The defendant had, therefore done nothing more than attempt to abate a common nuisance. The circumstances, the learned counsel said, were somewhat similar to the great Suttee Case which George IV. referred for the opinion of the Privy Council of his time. (Mr. Anstey here cited an authority and alluded to the decision in the Suttee case.) Having thus adverted to the points to which he would direct

the attention of the Court and to those which were supposed to have been touched by the rebutting evidence, the learned gentleman would turn to the case which the plaintiff had to rebut. Their Lordships having expressed an opinion that the plea of "not guilty" and justification is open to the defendants, he would ask the Court to bear in mind the evidence offered on that point. The counsel for the plaintiff had put questions as to the morality and status of the Maharajas, which, at the time, struck Mr. Anstey as irregular, and he would now take advantage of that irregularity. Then as to the last two pleas, if the averments are proved, the plaintiff has certainly put himself out of Court. It must have been seen whether the defendant has failed to prove the justifiable occasion, warranted by the occasion, whether the Maharajas are preceptors of the Hindu religion, whether they hold a high position as Brahmins, &c. It certainly could not be that this pretended teacher is one whose principles, both religious and moral, are to be tried by a different standard from that applied to all other suitors of the Court—principles which make good evil and evil good, adultery lawful, and vice to be pursued with the desire of one who seeks eternal salvation!! The learned counsel argued that this person is one who, committed to such practices of immorality, as came into light during the course of the trial, was disentitled to any redress for the alleged libel. The defendant is a member of the sect to which the plaintiff belongs; its immoralities and the licentiousness of those who pretended to be religious teachers, attracted his attention from an early age; he set himself to the study of the sacred books, and instituted enquiries and researches into the past history of the Maharajas, the result of which forced upon him the necessity, as it would

have forced itself upon any other reflecting mind, of exposing this rotten and monstrous system, and of laying bare its enormities and the excesses of its professors, to those who were aware of its existence as well as to those who had recently withdrawn from its influence. Referring to the plea of justification Mr. Anstey nrged that, if it appears from the plaintiff's own evidence, offered in rebuttal, that the enormities and practices alleged against him do exist, and if he has attempted to grapple with what the defendant says, and has failed to disprove it, he certainly has no right to be in Court.

Now, said the learned counsel, let us look to the evidence. It is proved by some of plaintiff's own witnesses, and by none even attempted to be disproved, that the passages put in as exhibits contain substantially the doctrines of the sect. Some witnesses were more positive than others, but there was not one who dared call into question the authenticity of the books or the correctness of the translations. For present purposes, therefore, Mr. Anstey would take it for granted that these two points were not at all disputed. Now, as to the Maharajas' pretensions to Godhead, the plaintiff, though he at first, denied to be a God himself admitted that the doctrine of the Maharajas being incarnations of the Diety was taught in the sacred books used by the sect. Amorous songs, he also admitted are addressed to the Maharajas by their female devotees. But, says he, "I deny that they sing obscene songs." Probably, to his perverted sense, or rather want of the sense of decency or shame, being provoked to unlawful love and those passages containing licentious sentiments appeared to be lessons of piety and morality! It was in evidence that every Vaishnav is bound to

hold the Shri Thackoorjee (the image of God) and *guru* to be the same; not only to hold, but to cherish the notion with all the religious fervour of which ignorance is capable. That is the doctrine of Hariraijee Maharaj. To make things still clearer, we have the "Chatoor Sloakee," a secred book of the sect, which inculcates that they must regard the Guru as God, nay, as greater than God; because, if God is displeased, the Guru interferes and obtains pardon for the sinner; but if the Guru be displeased, there is no mediator and therefore no pardon! It is the opinion of Dr. Wilson that this man (the Maharaj) is regarde as a mock Christian mediator!! The plaintiffd, moreover, in answer to the Chief Justice, stated distinctly that the favours from the Guru are greater than those from God; and in another place, admitted that the obligations to the Guru are greater than the obligations to God; because the former is the only guide to the Divinity. The witness for the plaintiff, Bhaichand Raylall, said that the Shri Thackorjee is equal to the image, and it is admitted by the plaintiff himself that the God Krishna can, by faith and by ceremonies, be brought into the image, which is an animated Divinity. One witness said that the Thackorjee is to be worshipped, but that the Guru is his representative. Jamnadass Sevaklal says "we swing the Maharaj, as we cannot touch the image and swing it." Two other witneses go further and say, it is not possible for the Maharaj to commit sin. The court was not investigating the doctrines of the ancient religion of the Hindus contained in the Veds, which comprehends books of the philosophy and morality, and which is far different from the doctrines of this wretched, miserable, and pestilential sect of the Vallabhacharyas. The religion of this sect is a new system set up at a modern date; and it is a

distinctly established fact that, in the proportion that these new and monstrous doctrines have gone forward, the ancient doctrines of morality have gone back and have been superseded. Returning to the evidence adduced for the plaintiff, it appears that he at first says, the Maharaj is not regarded as a god, and then, subsequently, admits that a minority of the Vaishnavas do regard him as a god. But, with the artifice of a perjured witness. he adds that he instructed his followers not to worship or consider him as a god. When questioned, however, by the learned counsel, if he could name a single person, whom the enlightened in the manner alleged by him, (the plaintiff) took time and said he could not recollect any person to whom he conveyed the valuable instruction. On the other hand, he admits that Govardhandass was employed by him to publish books and pamphlets in the name of the Vaishnav Dharmaprasarak Society, of which he (plaintiff) is the founder, patron, and presiding genius. In one of the publications of this Society, a passage occurs to the following effect: "The whole Universe is pervaded by God's spirit, when God plays with his creatures he is simply at play with his own spirit, and consequently the sin of adultery does not affect him. The sin of adultery is ordained for the world." If every Maharaj is considered an impeccable being, absorbed into the Divine essence by the ceremony of Brama-Sambandh, by which the sins of the eleven organs are washed away, and the agent is absolved, then it follows that these abandoned and licentious men (the Maharajas) may do what they like, however immoral and abominable the thing may be. Adultery with the Maharaj is, accordingly, "ras lila" and "ras rattee;" the god—this atrocious hypocrite, the Maharaj—is simply at amorous dalliance with his own spirit! (The learned counsel here com-

mented upon another passage in the pamphlet alluded to, and proceeded to say.) The meaning of this is clear, that adultery between creature and creature is one thing, but that adultery between God and the creature is sinful neither to God nor to the creature!! When with these abominable, blasphemous doctrines is coupled the belief of the sect that Krishna is an incarnation of God, that the Shri Thackorjee is the living image of Krishna, that the Maharaj himself is an incarnation of God, and when these articles of creed are propagated through the sacred books, what can the people think but that eternal salvation is to be gained by direct carnal intercourse with the God Incarnate's representative one earth—the Maharaj!! The people are told distinctly: "If you want salvation, get impregnated, as the gopees were, through the representative of God, for, in your present state, you cannot approach or be acceptable to God." The same doctrine is inculcated in the book of Hariraijee Maharaj, "God abides in the houses of the Vaishnavas," &c. &c. But, says the plaintiff, Krishna was a child between five and eleven years of age when engaged in amorous sport with the gopees. The learned counsel was not here to explain all the absurdities of the Hindu pantheon; but there was one passage to place the point beyond dispute. "Thereupon the maidens laid Krishna on the bed and enjoyed him." Proceeding with his observations, the learned counsel said that, according to the doctrines of the sect, no sense of shame should intervene between the Maharaj and his devotees; and as to public opinion, such an absurdity in Bombay was an abomination to him! According to one of the sacred books, the Maharaj is a being whose chief object is amorous sport.

The learned gentleman now came to another branch of the doctrines of the sect—the practices of the Maharajas—with regard to which it became a matter of difficulty, for very obvious reasons, for the defendant to prove all to which the truth entitled him. The principal doctrine inculcated is, that the Vaishnav must not see any fault in the Gurus; he must not divulge any of the Gurus secrets; and if he saw anything bad, he must regard it as "maya, a delusion." Acting up to this doctrine, we had one of the plaintiff's witnesses, Narrotamdass, telling the Court, I would not believe anything against the Maharaj;" another witness, Mansukh Khushal, who said "I have the same respect for the Maharaj as ever before;" another who says, "I consider the Guru equal to God, and he cannot commit sin; Raghojee Nathujee, who says. "It is a sin to give evidence against the Maharaj. Mathooradass Lowjee committed a sin when he gave evidence against the Maharaj. The Maharaj can do nothing wrong." Damodar Madhowjee swore to the following effect. "If any member of the Vallabhacharya sect is found to entertain opinions contrary to the doctrines of the sect, we would not believe him; I would not associate with him. If a person gave evidence of adultery against the Maharaj I would not speak to him." The evidence of this witness, who is a Marjadee, Mr. Anstey considered to be very material. He also admitted that there were persons who believed the Maharajas to be guilty of adultery, that there was a "bundobust" to be made to prevent evidence of such adultery being given, and that his reply was, there was no time for it. It is proved by the plaintiff, Mr. Anstey went on to say, that the one hundred names of God and the Maharaj are the same; that the devotees eat the dust of the

Maharaj's feet; that they show greater reverence to him than to the image; that in some of the rites the same homage is paid to him as to God; that the Maharaj is worshipped in other ways peculiar to the sect, &c.

Referring, again, to the dedication of "tan, man, and dhan," the learned counsel said no attempt had been made to rebut the statement of Dr. Bhau Dajee that in no other sect is such a dedication enjoined. The "mantra," or "gáyatri," is in other sects recited mentally and laid up in the heart, whereas the Vallabhacharya people are made to repeat to the guru a "muntra" appropriate to the monstrous doctrines of the sect. The meaning of this dedication is indeed very large, and is made clearer by the doctrine that Krishna can be approached through the Maharaj or the image. The dedication to Krishna, therefore, is made acceptable through the Maharaj, his representative. While in other sects, the office of Guru is attained to by learning and other accomplishments, in the Vallabhacharya sect it is hereditary and inalienable, though the Guru may be the greatest idiot in creation. The members of the sect believe it to be criminal to give evidence against the Maharaj, and, on the other hand, meritorious to give false evidence in his behalf. The belief is a distinct conclusion from the same common premise, *viz.*, that the Maharaj is incapable of committing sin and that he is above the sin of adultery. Some of the witnesses have clearly stated that the old Shastras have been *pro tanto* superseded by the doctrines of stories such as those of the 252 and 84. Whether they are allegorical or not, is a matter of little moment; the plaintiff himself did not dare call them allegorical, but said they were given as examples.

According to him, adulterine love is the most appropriate where with to approach the Almighty. Dr. Bhau Dajee, whose evidence the plaintiff was called to rebut, states distinctly that he knows the stories are understood literally. Now, so blind is the faith of the followers in the doctrines of these stories and the sacred books that Gopaldass Madhowdass, the brother of the ever-to-be-sufficiently-commemorated Justice of the Peace, Varjeevandass, stated that "If the Shastras enjoined the offering of women, I would believe in the doctrine!" The plaintiff, probably from a sense of terror in the presence of Englishmen and men of intelligence, said he was not a god and was not worshipped as such by his followers, a statement which he contradicted in the cross-examination, and to which, therefore, the Counsel trusted, the Court would attach no weight whatever.

Turning to the question whether the Maharajas are preceptors of religion, the learned gentleman remarked the fact was too well established to require any comment, that they never instructed their followers in anything and that all their preaching was confined to the "mantra" of a few words pronounced at the performance of the "kanthee" ceremony. Then as to their learning the witness most friendly to the plaintiff said that Jeevanjee Maharaj is the only exception, and that the rest are ignorant persons. There was not even an attempt to prove the allegation in the plaint that they are the preceptors of religion and hold a high position as Brahmins. And this is the preceptor of religion who has been damnified in his faith and his character as preceptor, who says "I know more of Sanscrit than I did before the libel!" There Lordships

had, moreover, a test of his learning; he could not give the names of the different Veds, and as to the number of the Brahmanas he had no idea whatever. The plaintiff called a number of witnesses as to his character, but before proceeding to a consideration of this part of the evidence, the learned counsel must say it was no part of the defendants case that these licentious and immoral practices were indulged in secretly. The plaintiff attempted to prove that he was never alone, but whether he be always alone or surrounded by a crowd of attendants, it is proved that the Maharajas are guilty of adultery and immoral practices. Veljee, one of his disciples, was every moment with him, and, he said the Maharaj had no power to send him out of his presence even for an instant. If the Maharaj ordered his personal attendants to leave him alone for a few moments, his order would not be obeyed by his own servants. The question arises here that, either this man's evidence is altogether true or altogether false; there is no medium; and it must be admitted or rejected in its entirety. It argues a common purpose and a combination throughout the rest of the case to secure that purpose; it shows common fraud and is unworthy of belief. The plaintiff contradicts Veljee in an important point, and says there were two females only in the zenana and there was no male servant. The sepoy at the door of the zenana is a mere fiction of the sepoy's brain. The plaintiff's two wives were each of the age of nine or nine and a half years at the time of his marriage; he denied the virtues of a Sanyasee; and it was for the Court to judge whether, not being a Sanyasee, he would abstain from unlawful intercourse until his wives became of age. The plaintiff as well as every one of his witnesses had not up to this moment heard of the existence of

Ras mandlees; some of them had not even so much as heard the name; and then, as to the adultery of the Maharajas, there was the same tenour of evidence. Again Mr. Anstey would say it was impossible to refine that evidence or to accept between the two courses; the Court must either receive it altogether or reject it altogether.

All the witnesses for the rebuttal of the defendants' case broke down signally. Nearly all of them were cautioned; two were fined; one was sent to gaol; one was under three years' surveillance of the police at Baroda; and another formed the subject of a report to Government for being concerned in a double murder!! This was the really unexceptionable character of the plaintiff's witnesses, many of whom had suddenly transported themselves to Bombay within the last month or two, for purposes, apparently, of this trial. As to the defendants' witnesses, on the contrary, not a single aspersion was attempted to be cast upon any of them and not a single question was put as to their character. Considered, again, from another point of view the evidence for the plaintiff was wholly partial and interested evidence; for every one of his witnesses was a member of the sect and a devotee of the Maharaj. The plaintiff and all his witnesses had great interests at stake. If the Court's verdict goes against him, were is he? asked the learned counsel. Gone, swept from the face of the earth. There is not a single female in the sect whose honor is not under a shade unless it could be shown that she has foturnately been free of an improper intercourse with her religious instructors. These were the motives for the members of the sect to put forth their best effects in favour of the Maharaj, while those who came forward now, and who were not indicated in the Bhattia case, had every thing to fear from a

verdict adverse to the plaintiff. And though the Court would not allow Sir Joseph Arnould's notes in that case to be put in, it was the fact that not one of the plaintiff's witnesses dared utter a word either against the justice of the sentence passed upon the nine conspirators or against the truthfulness of the witnesses for the prosecution. Here we had a lot of perjured witnesses and a body of suborned evidence for the reasons already explained; and every exertion was made to mislead the mind of the Court. These lot of witnesses, drawn from so many different places within the last three or four months, had heard nothing bad against the Maharaj. The absence of bad character, however, the learned counsel observed, is not a test of good character. Dr. Bhau Dajee stated that the plaintiff had a bad character. Dr. Bhau had nothing to gain, but certainly much to lose in coming forward to give his evidence, for he has an extensive practice among the Hindus and among members of the sect; whereas the plaintiff's witnesses had every thing to lose in the adverse issue of the trial, and therefore it was that they made every possible effort to injure the defendant's case. There was a singular combination among the plaintiff's witnesses, and according to the doctrine of the "maya," delusion, they could not believe what their eyes made them acquainted with. Really, said the learned counsel, the plaintiff's witnesses were men who, according to the proverb, ought to have long memories. (The learned counsel here commented upon the rebutting evidence of some of the witnesses for the plaintiff.) Now, as to the passage containing the alleged libel, the Court had the opinions of the three persons that it was no libel;—the defendant who knows the sense of what he wrote, Dr. Wilson, and Dr. Bhau Dajee.

There seldom was an occasion when a witness was subjected to a closer and more searching examination than Dr. Bhau Dajee was by the Court, and there seldom was an occasion when views, expressed at first, were more consistently adhered to than by this gentleman. With regard to the meaning of words in some of the translations, Mr. Anstey regretted to mention that an officer of the Court (Mr. Narayen Dinanathjee) should have dreamed of referring to a Persian dictonary for the meaning of a Sanscrit word, and giving a meaning to the word "Vyabhichar" (adultery) which it was not capable of. After all, the result was to establish the accuracy of Mr. Balajee's translation.

Now as to the immoralities of the plaintiff, the learned gentleman would draw a distinction between the specific acts mentioned in the pleas, which were abundantly proved, and the facts which came out in the course of the examination. Making a few remarks upon the distinction thus drawn, the learned counsel proceeded to deserve that if the plaintiff's witnesses were men of credit, if they had not disgraced themselves, and even if they obtained credit for their statements, the simple effect of their evidence would be, that they did not hear anything against the plaintiff. But notwithstanding all that, it would be no answer to the positive reliable evidence on the other side. The evidence on one side did not exclude the evidence adduced on the other. Besides, there was no doubt whatever as to the particular disease from which the plaintiff suffered, after the confession he made to Lakhmidass Khimjee and Dr. Dhirajram. The plaintiff, in his cross examination, admitted having been examined by three medical gentlemen, one of whom refused to come and give evidence in

court that he (the Maharaj) was free from any traces of the disease. Where are those medical gentlemen? The learned counsel would ask. In the absence of their evidence, Mr. Anstey would say it were no hypocriticism if the defendant, through him suggested that the traces of the disease were probably found in the plaintiff. The probabilities were against the supposition of the existence of any malice in the two gentlemen who swore to the plaintiff's being afflicted with the disease. What had they to gain by a false disclosure? Both had an extensive practice among the Vaishnavas, which they would not willingly forsake. Moreover, the delay of nine months in the examination to which the plaintiff thought proper, at the eleventh hour, to submit himself to, was inexplicable. If the whole case, Mr. Anstey argued, depended upon the venereal affection, and upon the plaintiff's self accusations, there was more than enough to oust him from the Court.

Now, look at the position of the defendant. He is a member of the Vallabhacharya sect, he sees the error of his ways in earlier life, and withdraws from the blighting influence of the doctrines of his sect. He contrasts in the course of time a friendship with the plaintiff, and engages with him in the discussion of the several public questions. Discussing upon the question of the prsctices of the Maharaj and the doctrines of the sect, he addresses a separate expostulation to the plaintiff, who had set himself up as an earnest propagator of their religion, to separate himself from the abominations of the sect, and to warn and admonish his brother Maharajas. The learned gentleman begged the Court to consider the difference in the position of the parties; and above all, to consider the serious difficulties which might overtake the

defendant in the event of an adverse verdict. Let him suffer by all means if his case was futile, but the learned Counsel submitted that it was fully made out in every important particular. In conclusion, Mr. Anstey trusted confidently that, their Lordships would, by their verdict, place the liberty of the press upon an inaccessible height, safe from the attack of the enemies of Morality, of the well-being of society, and of the progress of enlightenment.

Twenty-third Day, Tuesday, 4th March 1862.

Mr. Bayley this day rose to make a general reply to the defendants' case. The learned Counsel considered it his duty to relieve the plaintiff from the filthy charges trumpeted forth against him in the world. This was a case, so far as he could discover, unparalled in the history of jurisprudence, and he would shew that this was only an infamous and trumped up charge, but that the aspersions that had been uttered against the plaintiff were totally unfounded, and that no other verdict for the plaintiff must be the result. No fewer than sixty-three witnesses had been examined in this case—thirty-two for the plaintiff and thirty-one for the defendant; of the thirty-one witnesses which defendant had called, only four spoke as to the impropriety of conduct of the plaintiff; they were Kallabhoy Lalloobhoy, Dr. Dhirajram, Lakhmidass Khimjee, and Chattoorbhooj. The learned Counsel asked the Court to recollect the place where this trial was going on, for, if there be any country there was no country like India where witnesses could be so easily procured to support trumped up charges. It was said that the plaintiff had no *locus standi*, but this argument had been addressed

to the Court months ago, and it could not be listened to now. The learned Counsel said that his client was here suing in his capacity of a British subject, and he referred to the 37th clause of the charter of this Court. The mere suggestion of such an objection must have shewn what little further the Counsel for the defence had in his case. To take a comprehensive view of the whole case, take the respective position of the plaintiff and the defendant at the time the plea was put upon record. Defendant must have believed that plaintiff would not break through the rules of his caste to appear in Court to give evidence. No Maharaj had sense and courage enough as Mr. Bayley's client to face the Counsel who opposed him. Plaintiff had been subpœned by the defendant and why was he not called by him. These charges were trumped up against the plaintiff by Kallabhoy, Dr. Dhirajram, Lakhmidass, and Chatturbhuj. The simple question which the Court had to determine was libel, or no libel, or whether the special pleas of justification were proved or not. It was perfectly immaterial whether plaintiff had the disease or not, but the question was whether the special plea was proved or not. In the case of *Queen vs Newham*, there were five and twenty charges in the plea against Dr. Kolly; the jury found a few of the charges proved, and verdict was asked for the defendant; Lord Campbell, however, held that the whole plea should have been proved, and that there could be no partial finding for defendant. Mr. Bayley therefore contended that unless every little allegation was proved, the defendant could not be said to have established his pleas. The Court had already expressed an opinion that there was libel and the learned Counsel hoped that it would not

change that opinion. [*Mr. Justice Arnould* remarked that the Court held that opinion on the facts then before it, but since then more facts had transpired, and it was for the Court to see whether there was justifying occasion or not.] Mr. Bayley said that so far as the evidence had gone there was nothing to shew a justifying occasion. It was no justification of a libel to say that it had been previously published as a libel. As to the question of justifiable occasion, what was the relative position of the two parties? Defendant had no acquaintance with the plaintiff, nor was he himself aware of the alleged immoralities of any of the Maharajas, with the exception that when a boy he observed some improper conduct on the part of Jeevanjee Maharaj. Defendant said in the witness-box that he did not believe in the Bhagwat Gita, but it was upon that very book that he was sworn in the box. So he came here in a different position from that of a man who sincerely believed in the sacred books. So we have defendant who does not believe in his religion, and we have plaintiff who is a sincere follower of his religion and who is in a position only inferior to Native Princes. The evidence of character called by the learned Counsel infinitely outweighed the allegations made by the witnesses for defendant. If the evidence of bad character be anything—for it is nothing—it was fully and doubly met by the evidence of good character. No man's character would be safe, if the evidence of the boys Kallabhoy, Chatturbhooj, and Dhirajram, were to be believed, especially in this country where witnesses are prone to invent charges of infamous character. The evidence of these witnesses and that of the dealer in piece goods, Lukhmidass Khimjee, was not entitled

to credence against the evidence of a man in the position of the plaintiff and his witnesses. Previous to the publication of the libel, an acrimonious and bitter discussion was raging on the subject of religion, and attacks were made on the ancient faith by editors and young reformers. In the course of this trial, questions had been put to witnesses on religious points, and they had been asked whether they believed in plaintiff as a guru or an incarnation of God; and fault was found with their answers. But the learned Counsel observed, that it was all very well for us habituated to European modes of thinking to give a categorical answer to a question, but the universal mode for a native witness was to answer a question, in the form of a question. Plaintiff who is held in high respect by his followers has enjoyed good character; he never committed any of the acts imputed to him; and all the charges levelled against him had no real foundation, but were mere rumours suggested by native ingenuity. The marvellous critical powers of that Calvinistic divine, Dr. Wilson, whom the learned Counsel did not give much credit, found fault with the translation of the libel and described a word to be in suspensive participle—a participle which Mr. Bayley never heard, of before. From the interest which Dr. Wilson took in this case, the learned Counsel believed that he must have supplied defendant with the raw materials out of which the sixth plea was constructed. Plaintiff denied the several ridiculous acts imputed to him. Did he distribute water wrung out of his *dhotee* to his followers? No he said. Did he press the breast of a dying person with his foot? He said No, and he denied several such acts which were attempted to be fastened

on him. Defendant himself never saw the filth and mass of obscenity which his witnesses said they heard the Maharajas to have committed. The learned Counsel said that credence should be accorded to plaintiff who is a moral and religious man, while defendant was a man of no religion and consequently not worthy of belief. It was evident that the evidence of bad character would not be true, because a person leading an open life like the plaintiff could not have committed such enormities without being known. Plaintiff held the highest rank among his sect and was treated with honours which defendant was never likely to obtain in his life. It was in evidence that he was received with much pomp and high honors by the Gaekwar when he went on a visit to Baroda. The relative position in life of the plaintiff and the defendant shewed that there was rancour existing on the part of the latter who seceded from his religion. The learned Counsel therefore said that whether the publication be justifiable or not, the defendant must have believed at the time he wrote it that it was a libel and that it was not justifiable. Defendant confessed that it was true that it was a libel and that every fact in it was true. If he believed it was a libel against plaintiff only, why did he not say so in his letter in reply to the notice served upon him by plaintiff? The learned Counsel was of opinion that defendant did believe that the libel was levelled against the plaintiff and his object was to bring him into disrepute. Defendant had ample opportunities of retracting it, but he did not avail himself of them; on the contrary the manner in which he carried on his case shewed that he aimed at depriving plaintiff of the sympathy of the court and his followers. Plaintiff might have, if he wished, prosecuted

defendant criminally for libel, but he did not do so and gave defendant every opportunity to prove his case. Under all these circumstances plaintiff was entitled to ask for heavy damages. Mr. Bayley then proceeded to address the Court in the consideration of the evidence. He said that two considerations presented themselves on the whole of the evidence, namely, that nine-tenths of the whole evidence was merely composed of hearsay, and that the small portion of it which related to the acts of plaintiff with regard to the libel comprised the testimony of four persons only. In like manner the evidence might be devided into two branches, one forming an enquiry into doctrines of the Vallabhacharya sect, and the other relating to the practices of the Maharaj. Now in considering this case, the Court would recollect the marked difference between one class of evidence and the other. As to hear say evidence, the whole of it related to the practices of the sect and the belief of the sect as to those practices. With the exception of the plaintiff and one or two of his witnesses, there was not a single member of the Vallabhacharya sect examined by the other side to give a satisfactory account of the opinions of the sect. Let us look at the class of witnesses who had been called te give evidence as. to the doctrines and practices of the sect. We have Dr. Wilson, for commenting upon whom the learned Counsel was found fault with in public prints for using language which he had purposely used. Coming as a Missionary to draw people from their religion and holding a very low opinion of the Hindu religion in general, Dr. Wilson would naturally take an unfair view of the opinions and practices of the Vallabhacharya sect. Would a Roman Catholic go to a member of Scotch Church —a Church peculiarly narrow-minded—for the

purpose of gaining knowledge of the doctrines of the Church of Rome? So, is it fair to go to a person who comes to convert people to his own religion, and expect from him a candid opinion as to the practices of the Vallabhacharya sect. Dr. Wilson said that the Maharajas bore a low character and were given to obscene practices. The learned Counsel referred to the chapter 292 of the Penal Code which expressly provides an exception for the peculiar customs and usages of this country; by it all obscene books and publications are made punishable by fine or imprisonment, but an exception is made for pictures and representations on the walls of temples and in religious books. Here then, said the learned Counsel, was a recognition of such pictures by the law. Defendant and Dr. Wilson were both antagonistic to the Vallabhacharya belief, and consequently their evidence was not entitled to credit. The learned Counsel then said that the libel might be devided into parts; the first part containing an historical comment on the sect, and the second, a personal attack on the Maharaj. To prove the pleas of justification, the defendant must prove first the general practices of the sect as stated in the plea, and having done that, he must prove that plaintiff was guilty of the specific acts imputed to him. The Court had to consider whether the pleas justification were proved, and if there was any doubt as to any one of the allegations, then both the pleas must be found in favour of the plaintiff. A great part of the examination of witnesses, and arguments were directed to the point that plaintiff came here not as a man but as something more, but the learned counsel asserted that plaintiff was a man and entitled to respect, and entitled to more respect than was shewn to him in the course of the trial. Plaintiff very truly described his peculiar character and stated that

he was regarded as a Guru by his followers. It was perfectly admitted that the old Hindu religion does not exist in its original pure state, and therefore the modern state of society did justify Dr. Wilson in calling the Vallabhacharya sect a new sect. There were mere rumours of persons who had separated from that persuasion, and there were no witnesses of extensive learning in Sanscrit, except Dr. Wilson, called to prove the alleged recent foundation of the sect. Defendant Karsandass Mooljee himself was totaly ignorant of the Sanscrit language, nor was his witness Lukhmidass Khimjee learned enough to pronounce an opinion on the point. Now, the learned Counsel said, this was not a sect which had sprung up within the last few years as Mormonism had done; it was older than Protestantism, and therefore it was unfair to look from a European point of view upon those practices which even the legislature had sanctioned. There was nothing shewn in the trial that these practices had any foundation, there was only hearsay evidence upon that point, and mere rumours is not evidence. It was somewhat peculiar that Dr. Wilson with all his learning, and with all his knowledge of languages dead and alive did not draw distinction between works in Sanscrit and their version in Brij Bhasha. Plaintiff, however very properly pointed out that Brij Bhasha, works were not regarded as religious authorities, unless they corresponded with the Sanscrit originals. Considerable attempt had been made to blacken the character of the plaintiff in every particular. When we have a man thus abused and villified, we must look that passage in his life with reference to the establishment of a Sanscrit school at Surat. It was established and proved beyond a doubt that he established the school and defrayed its expenses. It was no part of his religion to establish

a school—a school not for teaching the obscene books, but for teaching the Sanscrit language. We have thus plaintiff in a position not inculcating immoral principles, but promoting the cause of education by establishing and assisting schools. Would the Court believe him, or believe the parcel of reformers who attack through plaintiff the religion which they have renounced. It was a remarkable circumstance that not one of the witnesses who spoke as to the personal character of the plaintiff, in any way corroborate each other. In dealing with this class of evideace we have isolated transaction spoken to by isolated witnesses, and there is no confirmation of the testimony of one witness by that of the other. No evidence was adduced, nor an endeavour made to obtain the evidence of persons in whose presence these three witnesses saw indecent transactions take place. Plaintiff negatived these transactions, and it therefore rested with the defendant to have produced the witnesses present. The evidence of the boy Kalabhoy Lallubhoy, who was said to be a witness to an immoral act of the Maharaj entirely broke down ; this boy does not relate the circumstance to his father or any other person, but he tells it only to the poet Nermadashanker who is antagonistic to the plaintiff. The learned Counsel then adverting to the subject of *Mantra* or dedication vow, which formed a good deal of the plea, said that that had been entirely disproved ; the only marvel was that a great many more witnesses were not called to prove the charges against the plaintiff. Plaintiff negatived these allegations, and considering his high position, he was entitled to the consideration of the Court. With regard to Gokulnathjee's commentary, the learned Counsel remarked that the poet Narmadashanker pronounced an opinion upon one part of it when he had not read the

whole of the commentary. His opinion was worth little or nothing, for he was still a boy and had yet much to learn; he was a poet in his own little sphere, and therefore incompetent to take a common sense view of a religious doctrine. The witness Narayen Dinanathji had read what the poet had not read, he had read the whole of the commentary, and he expressly swore that he had not the slightest doubt that the word "Purushottam" mentioned therein, did not mean Maharaj but God, and that the dedication vow was addressed to God and not to the Maharaj. The poet ventured his reputation as a poet and said that Purushottam was the Maharaj. The *Mantra* did not bear the construction put upon it by defendant's witnesses, and therefore it was perfectly reconcileable with the doctrines of the sect, shewing that plaintiff's religion was not a hypocrisy. The primary object of the dedication is not the Maharaj but God, and therefore the monstrous doctrine of dedication and the offering of wives and daughters to the Maharaj; falls to the ground. This infamous attempt to prejudice the learned Counsel's client among his people and expose his religion had entirely failed. It was unfair to have put a single isolated passage in a book into the hands of a wintness and try him by that selected passage, without allowing him to read the context. This was a monstrous attempt to mislead the Court upon a most material point, and shewed that the defendant and his witnesses were capable of resorting to extreme measures for the purpose of gaining this suit. Now what was the evidence as to "Ras Mandli." Most of the witnesses never heard of such a thing, and even plaintiff never heard of it. There was not a single witness on shis point, except Lakhmidass Khimji who said that he was an eye-witness of the transaction of this *mandli*. Lakhmidass goes to

the *mandli* with his debauched old uncle, he sees the beds let down, the light put out, and strangers ordered to withdraw from the room. Now, what occurs in the room, nobody knows, that is left to the imagination of the witness. Are we to believe the uncorroborated testimony of this witness that such monstrous acts of immorality are daily perpetrated among the Vallabhacharya sect? It is very easy to change the word "Ras" into "Rus" and give a different version of the exhibition of the "Ras Mandli" which is nothing more than a dramatic representation and in which there is nothing improper. A paper had been put into plaintiff's hand, and he was asked whether the word "Ras" appeared there; he said it did not, it was the word "Ras" and his statement was corroborated by the Interpreter of the Court. Referring to the evidence of Dr. Wilson, the learned Counsel said that there was much verbiage in his answers. Plaintiff gave direct and simple answers to questions put to him, while Dr. Wilson gave his evidence in a roundabout way, and the Court was often obliged to ask him to give direct answers. Dr. Wilson said a good deal about Krishna and the wonderful powers he exhibited when he was of premature age, but the learned Counsel remarked that Krishna was not only an object of worship among the Vallabhacharyas, but among all the sects throughout India. There was nothing definite in the description of the Doctrines of the Vallabhacharya sect given by Dr. Wilson; he had no clear perception of it himself. Therefore judging from his point of view, nothing was proved by that Doctor inconsistent with the common principles of morality, and there appeared nothing monstrous in the doctrines of the Vallabhacharaya sect. A good deal was expected from Dr. Wilson the manner in which he trumpeted forth in the witness-box

his various designations and connections with learned societies; but so far from damaging the plaintiffs case, he had given only a confused and hazy account of the Vallabhacharya sect. Then it was said with doctrinal matters, that the essay on adulterine love in the "Swadharma Vardhak Magazine" expressly sanctioned adultery. This article, the learned Counsel said, by no means inculcated the practice of adultery. The early part of the essay contained translations of stanzas from Sanscrit works and adulterine love was mentioned to illustrate the intensity of love. (Reads the translation of the essay.) The learned Counsel asked if there was any thing in this article which inculcated the practice of adultery? The only conclusion to be drawn from it was that in the same way as a woman loved her paramour, so we must with such an intensity of love, worship God. The Court would see that the justification was not, as it might have been, pointed to a particular part of the libel, but is was a justification of the whole of the libel, and that as defendant had entirely failed to make out the immoral doctrines which were alleged to have been preached by plaintiff, the justifica tion fell to the ground. Plaintiff had shewn that the passages inculcating immoral practices were not translations from Sanscrit works and therefore not regarded as religious authorities; consequently the defence in that point had entirely failed. Referring to the book of ten principles, the learned Counsel said that it was a mere lecture and not a word of authority. Dr. Wilson with all his learning did not give an account of this book, nor was the plaintiff aware of its existence. The learned Counsel believed that from beginning to end, the sole object of the defendant was to

gain popularity by exposing the practices of the Maharajas, but in this attempt he had failed. He said that no competent person of a standing as high as that of the plaintiff, had been called by the other side to speak to the doctrines and practices of the Vallabhacharya sect. Plaintiff had clearly sworn that he never allowed his followers to resort to the practices which were imputed to them in reference to him. The learned Counsel asked the Court not to judge of the case by a standard of European notions of morality and religion. Defendant had not done anything equal to what plaintiff had done, defendant was a mere publisher of a newspaper, while plaintiff had established a school and took much interest in the cause of native education. The learned Counsel said that the libel was not justified, and if one-fourth of the plea were not proved, the Court must find in favour of the plaintiff. A great many things had been introduced for the purpose prejudicing the plaintiff in the eyes of the people; for example, the Bhattia "bundobust" with which he had no connection whatever, nor was he pulling the strings from behind. There was no attempt or suggestion made in that "bundobust" to prevent witnesses from giving evidence in this Court. The learned Counsel observed that all the evidence with regard to the doctrines and practices of the sect was entirely hearsay, and given by persons whose object was to mislead the Court and the people. He next contended that all the points in justification of the latter portion of the libel were not proved, and that the probabilities were in favour of the innocence of the party attacked. There was no proof that defendant at the time he wrote the article was himself aware that the facts he had put into the plea were true. Defendant learnt some of these facts from

Lakhmidass Khimjee which he subsequently put into the plea and Lakhmidass himself admitted that he did not communicate these facts to him until after the action had been filed. Mere supposition of the immoral character of a man would not justify the publication of a libel, and subsequent knowledge of such character could not be pleaded in justification. Defendant had sworn that he had no ocular proofs of the Maharajas. The testimony of the personal immoralities of the plaintiff was confined to the three witnesses already mentioned, and that Dr. Bhau Dajee's evidence in no way proved what was asserted by these witnesses. Dr. Bhau Dajee said a good deal, but what he did not say was far more important; he saw a little, but what he did not see was far more important. Because other Maharajas were of loose character, it by no means followed that plaintiff was so too. It was a remarkable circumstance that Dr. Bhau Dajee spoke of a conversation with plaintiff about a disease and the impression left upon his mind was that it was a venereal disease, but he did not treat it so. Now, what was plaintiff's account of the disease. He said that he had been subject for years to eruptions or ulcers since he had been on a visit to Sind which is a very warm place. Supposing that plaintiff had been suffering from the bad disease, was it likely that he would have employed Lakhmidass Khimjee to call Dr. Bhau Dajee, especially when Lakhmidass held opinions at variance with his. If he did have that disease, where did he get it. It could not have been communicated to him by any other than a public woman; but it would be a most improbable thing for a man having such a range of female worshippers at his command to have had intercourse with a public woman. Plaintiff was by no means an ignoramus, and the examination and

cross-examination he stood, must have, in Mr. Bayley's opinion created a favourable impression in the mind of the Court. The learned Counsel made severe comments on the evidence of Dr. Dhirajram with reference to the disease; he denounced it as a simple tissue of falsehoods and unworthy of belief. He then said that the evidence of acts imputed to the plaintiff had been so studiously connected as to require a thorough sifting. Some of the witnesses as well as the plaintiff had sworn positively that *gulal* powder was not thrown in the temple of Laxmeejee at Beyt and they gave reasons for that. The Court had been asked to believe that horrible and disgusting scene of Ras Mandli depicted by the witness Lakhmidass Khimjee. It was an isolated fact and highly improbable one, and had received no corroboration from any of the witnesses. The learned Counsel believed the account of the scene to have been concocted by Lakhmidass, and as it was so filthy and loathsome he thought it necessary to pass over it. Witness Lakhmidass Khimjee was contradicted in all the specific acts of immorality on part of the plaintiff mentioned by him, and his evidence was nothing more than a tissue of falsehoods. The boy Kallabhoy Lalloobhoy gave evidence of a similar character. He was a boy only sixteen years of age and he spoke of having had conversation with plaintiff three years ago on the subject of adultery, and re-marriage of widows. Was it to be believed, asked the learned Counsel, that a boy of the age of thirteen should hold such a conversation with his Guru? It was also highly improbable that he should have been allowed access into a room where plaintiff was said to have had improper intercourse with a woman. It was an isolated circumstance, and which could not be contradicted, except by the evidence of plaintiff himself. This

boy Kallabhoy appeared to be an athiest and on the same footing with the defendant. [*Mr. Anstey* interrupting.—Defendant swore that he was not an atheist]. Mr. Bayley said that for all that he would venture to call him an athiest. He said that all the three witnesses who spoke of the immoral acts of the plaintiff were in league with the defendant. Dr. Dhirajram was an intimate friend of the defendant, witness Kallabhoy was Dr. Dhirajram's nephew, and the witness Chatturbhuj was once a pupil of the defendant. They had concocted the charge against the plaintiff, they were not persons of a free and independent character, nor of a high class of life. These witnesses spoke of isolated facts, each telling almost the same story, and they were not corroborated by each other or by other evidence. Upon them alone rested the evidence of the charge against plaintiff. Then came, said the learned Counsel a good deal of evidence on the other side as to plaintiff being a man of bad character, but which carried refutation on the face of it. He ventured to say that of the thirty-one witnesses examined by the defendant, the evidence resolved into that of only three witnesses already alluded to. The learned Counsel next called the attention of the Court to the evidence on behalf of the plaintiff and said that all the witnesses gave a good character to him and most of them directly contradicted Lakhmidass that *gulal* was not thrown in the temple of Laxmee. Plaintiff being a man of high character and leading an open life, any improper act on his part would have been known to these witnesses. He entirely disclaimed the superhuman character ascribed to him. He gave a distinct account of the sect, and shewed that he did not belive in the Brij Bhasha works unless they corresponded with Sanscrit originals. He denied that

he was swung as a God, but said that he was swung as a Guru. He was asked as to having been examined by three doctors during the progress of the trial, and comments were made upon the fact of the medical men not having been called for examination. The learned Connsel said that in the case of *Queen vs. Palmer* for poisoning Cook, experiments had been made with poison on dogs and other animals; but Lord Campbell and the other judges refused to take that evidence. Mr. Bayley said that evidence could not be given and it is not fair to draw unfavourable inferences for having withheld it. It was never suggested by defendant or his witnesses that plaintiff was a Guru or preceptor of the old religion. The learned Counsel asked the Court to see whether defendant had not characterised plaintiff as a Guru in the libel, which he afterwards denied in the pleas. Defendant himself stated that Maharajas are in one sense preceptors of religion, and Dr. Wilson said the same thing. There was one witness on the other side on whom only the learned Counsel relied—Vinayak Laxuman Shastree of the Sudder Adawlut—so favourable was he to the plaintiff's case. This witness said that the Vallabhacharya sect did not differ generally with other Hindu sects, except in some minor points. The natural construction put upon the article of the libel by the Interpreters of the Court, Messrs. Flynn and Narayen Dinanathjee, was that it contained a personal imputation upon plaintiff, and the learned Counsel therefore asked the Court to support the evidence of its own sworn interpreters, in preference to the amateur interpreters, such as Dr. Wilson, who merely believed that it had reference to the commentary. The statement of the defendant that he did not make a personal attack

upon plaintiff, falls to the ground, for, if that was not the intent, why did he not withdraw the article and tender an apology when asked to do so. As to the libel being published on a justifiable occasion, to justify it there must be circumstances in the mind of the writer, and he must have reasons to know that what he writes was true. The simple question was, was this a libel or no libel, on the plaintiff so as to lower him in the estimation of the public. If there be no justification, the law implies malice, and defendant must therefore be subjected to heavy damages for having endeavoured to blacken the character of not plaintiff only, but the whole Vallabhacharya sect. The learned Counsel said that the Court was bound to assess heavy damages, considering the mass of filth and obscenity with which it had been polluted, and the endeavours made to bolster up a weak case. The Court was bound to support its translation and hold it a libel, and Mr. Bayley maintained that it was libel without a justifiable occasion, for defendant at the time he wrote it, had no personal knowledge of the alleged impropriety of conduct on part of the plaintiff, and he could not be justified therefore in singling out the plaintiff. In looking at the libel it would appear that there was nothing to justify doing so, not having a personal knowledge of the alleged immoral acts. Mr. Bayley repeated that every single material fact in the plea of justification must be proved to find in favour of the defendant, but he said that that had not been done, and therefore plaintiff, was entitled to a verdict. The whole of the issues must be found in favour of the plaintiff, if even a portion of the plea was not proved. Plaintiff had done everything in his power to meet the charge, and he had successfully met the imputation to his

character which was attempted to be blasted. His antecedent, and his honesty and integrity were not to be lost sight of. The learned Counsel in conclusion asked to Court to assess heavy damages considering the malicious character of the libel, and the foul attacks made upon plaintiff in public prints during the progress of the suit.

The Court reserved its judgment *sine die.*

JUDGMENT.

Twenty-fourth Day, Tuesday, 22nd April 1862

SIR MATTHEW SAUSSE, in giving judgment, said:—

This was an action on the case for the publication of a false and malicious libel in the form of an editorial article that appeared on the 21st October 1860 in a Gujarati newspaper published in Bombay called the *Satya Prakash* or the "Light of Truth."

The publication is as follows:—[Reads the article.]

This publication may be divided under four heads:—

1stly. So far as it characterizes the sect of Vallabhacharya, as heretical in respect of the Ancient Hindu Religion.

2ndly. As it attributes to the Maharajas as the Spiritual heads of the sect, the inculcation of heretical and immoral doctrines.

3rdly. As it charges the Maharajas as a body with immoral practices under the pretence of Religion.

4thly. So far as it charges the plaintiff individually with the practice of immorality with the females of his sect.

The plaintiff complains that these several charges are false and malicious and that they have been published of, and injuriously affect him, in his individual character as a member of society at large, in his religious character and conduct as a Brahamin, as a Maharaj, as a Hindoo high Priest and as a member of the sect of Vallabhacharya.

He claims damages for the injury done to him in these several characters which he claims to fill.

The defendants *have pleaded* several pleas.

Firstly.—Not guilty.

Secondly.—That the Maharajas were not preceptors of the Hindu Religion.

Thirdly.—That they are not the heads or chiefs of the Bramins.

Fourthly.—That the plaintiff was not a Hindu Priest of high Caste or a preceptor of the Hindu Religion.

Fifthly.—That the sect of Vallabhacharya is not an ancient sect and that it holds doctrines repugnant to the doctrines and practices of the ancient Hindu Religion.

Sixthly.—That the translation of the latter portion of the libel as rendered in the plaint, was not correct.

Seventhly.—That the charges made by the defendants in the publication were all true.

Eighthly.—The same plea in a general from.

The Plaintiff joined issue on the first six pleas and replied "De injuria," to the seventh and eighth.

The seventh plea was of very great length, it set out various points of doctrine from books alleged to be of religious authority in the sect of Vallabhacharya and relied upon those passages as justifying the publication in charging heresy and immorality of doctrine against the Maharajas and the sect. It also put in issue various facts and circumstances as proof of the evil reputation

of the Maharajas as a body for immorality, and it finally charged specific acts of personal immorality to have been committed by the plaintiff.

The Court has been thus compelled to receive evidence at great length upon controverted points of doctrine amongst the members of that sect, and to receive it in great part through the unsatisfactory medium of translations of isolated passages from works in Sanscrit or Brij-Basha, which are practically dead languages and not provided for in the translator's department.

For the plaintiff there were examined thirty-one witnesses and for the defendants thirty-three. The case was contested with all the obstinacy and acrimony which generally characterise caste and religious disputes, when they unfortunately force themselves into a Court of law. The trial was thus prolonged to a most unusual length.

Publication by the defendantes has been admitted. Upon the evidence, I intertain no doubt that the alleged libel has been correctly translated *into English* as it appears upon the plaint and think as so translated that the latter portion contains matter highly defamatory of the plaintiff. It substantially singles him out by name and thus directly charges him with leading a licentious and immoral life, and with defiling the wives and daughters of his devotees. It then calls upon the Plaintiff to desist from those practices and ends by assuring him that unless he does so, he cannot give religious admonition or propagate his own religion. The applicability of that portion of the publication to the plaintiff has been controverted to some extent.

A very intelligent witness, Dr. Bhau Dajee, stated after some consideration that he understood

the latter part as a "general expostulation" with the Maharajas as a class and "that any intelligent reader would so understand it" and afterwards that he did not think it alluded to the Plaintiff." However he qualified that evidence in the end by stating to the Court "that he could not say that the plaintiff was excluded," that with his knowledge of the plaintiff's antecedents "he *did* include him amongst those who were charged with defiling the wives and daughters of devotees," and his last answer was "that as a reader not knowing the plaintiff's antecedents he would consider it *doubtful* whether he was included or not." Now, if a writer express himself either through design or negligence in such a manner as to render it doubtful in the minds of one class of readers whether the defamatory matter applies to a person named; but leave no doubt whatever on the minds of others, that it does so apply, the writer must abide by the consequences, and if otherwise liable he must answer in damages for the injury he has done to the person so defamed. Libels are to be construed according to the plain and ordinary sense of the language in which they are written, and the suggestion of a possible contruction by which the party complaining might not be included is not to relieve the libeller from responsibility.

The defence made at the bar, that the libellous matter was not intended to apply to the plaintiff individually is scarcely consistent with the reply which the defendants made to the complaint by the plaintiff in April 1861, when the latter called for a contradiction of and apology for, the statements "so far as they relate to the alleged improper conduct ascribed to himself" the reply of the defendants was through the columns of their newspaper that they saw nothing to require "*explanation, alteration, or apology.*"

Then holding the publication to be libellous and consequently malicious, I have next to consider the defence relied upon under the plea of *not guilty*, viz., That the defamatory matter was published under circumstances which formed a justifying occasion.

"A Justifying occasion" has been defined in very clear terms by Baron Parke in *Toogood v. Spyring* 1, Compton, Meeson, and Roscoe. He states to be "the publication of defamatory matter, honesty made by a person in the discharge of some public or private *duty*, whether legal or moral, or in the conduct of his own affairs in matters where his interest is concerned. In such cases the occasion prevents the inference of malice" and he goes on to say "that if *fairly* warranted by any reasonable occasion or exigency, and honesty made such communications are protected for the common convenience and welfare of society, and the law has not restricted the right to make them within any narrow limits."

The effect of the existence of a "Justifying of occasion" is to negative malice both in fact as well as in law, either of which is nesessary to maintain an action of libel. The difference between malice" in fact and malice in law is laid down in *Bromage v. Prosser*, where the former is defined to be *ill will* against a person," and malice in law "a wrongful act done, intentionally, without legal justification or exense." And in *Duncan vs. Thwaites* 3 Barnwell and Cresswell, Chief Justice Abbot further defines, the meaning of the word "malice" when he says the use of the word "malicious" in declaration of libel is "rather to exclude a supposition that the publication had been made in some innocent, than for any other purpose.

In cases of this kind when tried before a Jury it is their province to find, whether the communication was made *bona fide* or not and if in the affirmative, it becomes the duty of the judge, as a matter of law, to decide whether the occasion of the publication was such as to rebut the inference of malice or in accordance with the definition in *Bromage v. Prosser* whether there was any "*legal* justification or excuse for the wrongful act."

I have thus to investigate and decide first, whether the publication was made *bona fide* by the defendants, and next, if it were, whether, then a legal justification or excuse, is to be found in the surrounding circumstances proved in this case for the libel upon private character which the publication contains. In the present case I see no reason the doubt that the defendant enterned into this controversy with the honest purpose of exposing to public reprobation doctrines which he conscientiously believed to be subversive of social morality, and so far as he has commented upon those doctrines, I see no ground for complaint. I consider his strictures not to have in any degree exceeded the "licentious comments" as it has been termed which is allowable upon matters more immediately affecting public interests, and I have no doubt that matters affecting the morality of a considerable portion of the public are undoubtedly matters of that description. But the question remains whether under all the circumstances the defendants were justified in leaving the region for commentary altogether and in making a direct charge upon the plaintiff's private character, by accusing him of having been engaged in the practice of defiling the wives and daughters of his devotees under the pretence of religion. I

thought the law on this subject was very clear, but in deference to some difficulty, which my brother Arnould feels I shall examine it at greater length than I would otherwise have considered necessary.

Now, so far as the plaintiff is concerned, the case stands thus. The plaintiff was practically a stranger to Bombay prior to July 1860, when he arrived. At first he united in some reformatory views of the defendants or others with reference to female education and re-marriage of widows, but was supposed to have in part seceded from them after. He set on foot a pamphlet or periodical called "the Propagator of our own Religion" and invited extraneous or it may be hostile criticism, and discussion upon the views it placed before the public. On the 21st October 1860 the libel appears and the plantiff is charged in it with conduct which if true, ought to deprive him of the respect and indeed communion with the members of any civilized community.

The defendant, Karsandass Mooljee, was not personally acquainted with the plaintiff, nor was he, according to his own admission, personally acquainted, with any act of immorality committed by the plaintiff or any other Maharaj, but prior to the libel, one Lalshankar, an intimate friend of his, volunteered the information that the plaintiff bore a bad character for morality in Bombay, in Surat and in other places in the Mofussil, where Lalshankar had been. Lalshankar was a native of and an annual visitor to Surat, where the plaintiff had a temple. So far as the plaintiff was individually concerned that was all the information respecting his alleged immoral practices, that the defendants possessed at the time of the libel. It does not appear

that the defendants took any pains to make inquiries into the truth of these general charges, but rested satisfied with the statements of Lalshankar. The defendant Karsandass states that it was after the commencement of the action he began to make inquiries into the plaintiffs private life. In addition, the defendant, who was originally a member of the Vallabhacharya Sect, appears to have entertained for ten or twelve years the belief that the Maharajas as a body were guilty of adulterous practices amongst their female devotees. That belief appears to have been founded upon general rumours in the sect and upon a resolution passed by the Bhattia Caste in 1855, to put a stop to such alleged practices by preventing their females from going to the temple of the Maharajas; and also upon reiterated charges of immoral and licentious conduct made against the Maharajas as a body, by newspapers, pamphlets and periodicals from 1855 until some months prior to the publication of the libel. The defendant's conviction appears to have been also influenced by the discovery in 1860 of a commentary by Gokulnathjee which appeared to the defendant to give doctrinal sanction to the immoral practices which he had previously believed to be existing amongst the body of the Maharajas. It appears, however, from Dr. Bhau Dajee's evidence that he has personally known some few Maharajas whom he described, as men of unspotted character, and of piety, and good men. Applying then the test of Baron Parke *Toogood vs. Spyring* to these circumstances,—were the defendants in making this defamatory charge on the private character of plaintiff through the columns of a newspaper, discharging any legal or moral public duty or any *legal* or *moral private duty*, or was the publication made in conduct of his own

affairs in matters where his interest was concerned? There was clearly no *legal* duty either public or private cast upon the defendants to do so. Nor was there any moral duty, public or private, cast upon them to make that communication to the public beyond what might, press upon any other individual who had heard a bad character of the plaintiff for morality and believed that report to be true. It would be a novel and a dangerous doctrine to lay down that every editor of a newspaper, or any one who had the command of its columns, should be held justified even without inquiry in making specific charges of a most defamatory character against the private life of individuals, simply because he had heard them and honestly believed them to be true, and that from their character it would be conducive to public morality to publish them. Were such a doctrine to prevail, it should be maintained independently of the actual truth of the charges, and property in private character which the law protects so jealously, might be ruthlessly swept away without redress. In my opinion there is but one plea which can serve as a defence to a libel published as the present has been, viz: That the charges contained in the libel are true. This principle is supported by the view taken by Chamber J. in *Rogers vs. Clifton* 3 Bosanquet and Puller 587, and is cited with approbation by Mr. Justice Cresswell in *Coxhead vs. Richards* 2 C. B. and I think it is further sustained by the decision and dicta of the Judges in *Paris vs. Levi* 9 Weekly Reporter, which was cited to show that the doctrine of Justifiable occasion" has been extended to publications in newspapers as well as to those which come under the ordinary term of "confidential or privileged communications." But that case upon examination will be found

to range itself under the class of cases which from *Tabart vs Tipper* 1 Campbell, down to the present time, have upheld the right of public comment and criticism, upon documents submitted to the public consideration. The pfaintiff in *Paris v. Levi* published an advertisement calling the attention of servants to the fact that he was offering unprecedentedly high prices for articles that servants were in the habit of selling out of their master's establishment, this advertisement was commented upon by a heading of "*Inducement to servants to rob their masters.*" There was no charge against the plaintiff of robbing any one but simply that the tendency of his advertisement to the public was to lead dishonest servants to pilfer for the purpose of taking advantage of these unusually high prices. If made bona fide, the comment does not appear to exceed what might reasonably be allowed, and it was so held at the trial. It afterwards came before the full Court principally on the ground of misdirection. With the direction of Chief Justice Erle, as reported in that case, I fully concur. Treating the case as one of comment; he said that the plaintiff was not entitled to recover unless he established that the defendant was actuated by malice; that the law however did not require that the plaintiff should shew personal malice or ill will in the sense of private hatred; but that the defamatory publication was published without any of those causes which the law considers will justify them. "Such causes excuse the publication because they shew the party was not actuated by any corrupt or malicious motives in saying that which tends to defame the character of another." But in criticism on matters which have been published by the complaining party, Lord Ellenbrough laid down in a case where a

journal had criticised books which have been published dangerous to morality; "that liberty of criticism must be allowed, or we, should neither have purity of taste or of morality; that publication, I shall never consider as a libel, which has for its object, not to injure the reputation of any one, but to correct misrepresentation of fact, or to censure what is hostile to morality." "That if the jury found their verdict for the defendant, it must be on the principle so laid down. That had the defendant said one word against the plaintiff with reference to the plaintiff's private character, he would have felt himself bound to say, 'there was no excuse of the publication.'"

So Bayles J. says: the real question was, "does the comment go beyond what is sanctioned by law, was there a reflection on the plaintiff's private character." And Keating J. states:— "Now it is conceded that whilst a newspaper is justified, nay it is rather incumbent on them to *comment freely* on any *publication*. I see no distinction between this handbill and any other publication for comment. Yet *that is not to degenerate into imputations of a personal character*. What was said at the trial wss "That though a fair comment could be privileged, yet if of a personal character it would not." The direction was perfectly right. In *Carr v. Hood*, 1 Campbell, Lord Ellenborough said: "*Shew me an attack on the moral character of the plaintiff, or any attack upon his character unconnected with his authorship, and I shall be as ready as any Judge that ever sat here to protect him*; but I cannot hear of malice on account of turning writers into ridicule." Thus from *Tabart v. Tipper* and *Carr v. Hood*, from 1808 down to 1860 when *Paris v. Levi* was decided, defamation of private character in public journals,

has been treated as ordinarily beyond the pale of "justifying occasion;" and I see nothing in the present case to take it out of that principle. The selection of a public newspaper as the medium for matter defamatory of private character is one of the strongest proofs of such malice and will withdraw the protection of a "justifying occasion."

It was also contended that the defendant Karsandass Mooljee was justified in publishing the libel by reason of the private interest which he had as a member of the sect of Vallabhacharya in protecting it from the corruption of such immorality as was charged against the plaintiff, but I much doubt on the defendant's evidence whether he can be considered to be a member of that sect, whatever force there might be in such an argument, is taken away by the mode of publication having quite exceeded the bounds suited to the occasion. Had he taken means to have convened a meeting of the sect and so published to the members interested the defamatory matter concerning one of their spiritual heads with a view to investigation, perhaps he might have had some colour for the defence, but the defendant selected a public newspaper, and without any previous enquiry published the defamatory matter, not to the parties interested only, but to the whole world. For the above reasons I think the plaintiff is entitled to a verdict upon the plea of the general issue.

I now proceed to consider the plea of justification. In commenting upon the evidence I will avoid as far as practicable any reiteration of its disgusting details and deal with the credibility of the witnesses on general principles and in general terms. We are not now called upon to express any opinion as to whether the plea of justification

covers the charge in the libel. That plea if proved, is on the record admitted to contain a sufficient answer, and it is with it alone we have now to deal.

The text upon which this libel was founded is a commentary by Gokulnathjee Maharaj, upon a work composed by his grandfather Vallabhacharya, the founder of this sect. In the Sanscrit original, the name of the person to whom an offering of wives and daughters &c. is to be made is not mentioned, and upon the evidence there can be no reasonable doubt that the offering was to be made to "Purushottam" which is a name for the Supreme Being. The compiler of a small work in Gujarati entitled "Biographical sketches of ancient Hindu Authors" (and in which he gives an account of the various religious sects in India) acting upon his own knowledge of the Sanscrit language and upon his own construction of this passage, introduced the word "Acharya" to represent the name of the person to whom this offering was to be made. That word appears to be one of very general and undefined application in various Hindu sects, but in the Vallabhacharya sect it is synonmous with *Guru* or Spiritual Guide, and is one of the hundred and more names applied to the Maharajas The term "Purushottam," i. e. Supreme Being or Lord is also one of the names by which they are addressed. The defendant took his text as it appeared in a Marathi translation of the Gujaratee work, changing "Acharya" into "Maharaj." He had no means of consulting the original as he was not acquainted with Sanscrit, and there is no apparent reason to doubt that he relied on the accuracy of the compiler in introducing the word "Acharya" into the text. It is not necessary to enquire and it would perhaps be hazardous to offer an opinion, upon

what the intention of Gokulnathjee was, in making use of those words, but it appears abundantly from works of recognised authority, written by other Maharajas and from existing popular belief in the Vallabhacharya sect that Vallabhacharya is believed to have been an incarnation of the God Krishna, and that the Maharajas as descendents of Vallabhacharya have claimed and received from their followers the like character of incarnation of that God, by hereditary succession. The Maharajas have been sedulous in indentifying themselves with the God Krishna by means of their own writings and teachings and by the similarity of ceremonies of worship and addresses which they require to be offered to themselves by their followers. All songs connected with the God Krishna, which were brought before us were of an amorous, character and it appeared that songs of a corrupting and licentious tendency, both in idea and expression, are sung by young females to the Maharajas, upon festive occasions, in which they are indentified with the God in his most licentious aspect. In these songs, as well as in stories, both written and traditional, which latter are treated as of a religions character in the sect, the subject of sexual intercourse is most prominent. Adultery is made familiar to the minds of all; it is no where discouraged or denounced, but on the contrary, in some of the stories, those persons who have committed that great moral and social offence are commended, and in one of them, the actors are awarded the highest position in the heaven of the Vaishnavas, although nominally, for some attention paid on one occasion to the clearing of a temple of the God. The love and subserviancy inculcated by the Hindu religion to be due in a spiritual sense to the Supreme Being has been by those corrupt teachings materialised, and to a large extent,

transferred to those who claim to be his living incarnations. It is said to be ceremonially effected by a mystic rite or dedication of "mind" "property" and "body" (or *man, dhan,* and *tan*) which is made in childhood by males, but by females at the ceremony of marriage, and a popular belief appears to exist to a considerable extent that this dedication confers upon the Maharajas absolute rights over the "minds," "properties," and "bodies" of their followers. The Maharajas, however, appear upon the evidence to have indoubtedly availed themselves of the existence of those impressions to gratify licentious propensities and a love of gain. These doctrines and practices are opposed to what we know of the original principles of the ancient Hindu religion which are said to be found in the Veds. They recognise no incarnations, but the well known *avatar* and the Hindu code of law and morals equally inculcate chastity in females before marriage, and fidelity in the married state. Therefore, so far as we may be called upon to express an opinion upon this part of the plea, the defendant has successfully shewn, that the doctrines of the Vallabhacharya sect are in those respects contrary to those of the ancient Hindu religion. He has proved that the Maharajas claimed to be and are considered and worshipped by a considerable portion of the sect as Gods or incarnations of God; and he has, we think, established that, this superstition has led to a lamentable want of moral feeling in the Vallabhacharyan sect, and to the practice of gross immoralities. It is to the credit of the plaintiff, that in his evidence he has disavowed for himself any claim to be considered as an incarnation of God. He stated that he had so informed his followers, but was unable to remember when, or to whom he addressed such advice. There was no other evidence offered of his having done so, but

it appeared to establish the generality or strength of such a belief amongst the followers of the Maharajas, when it became necessary for him to thus disavow that character. The next branch of this plea of justification is that in which it is alleged, that the immoral or licentious practices of the Maharajas as stated in the libel, were matters of notoriety in the Vallabhacharya sect as well as outside of it, that they had been denounced by their own followers, and by others in pamphlets, newspapers, and hand-bills published in all languages in Bombay. Several credible witnesses of the Vallabhacarya sect were examined, who deposed to the existence of that opinion in the sect, and in addition as evidence of the strength of that feeling, the defendants put in issue a resolution passed at a meeting of the Bhattia caste in 1855 for the purpose of preventing the females going to worship at the temples, except at period when the Maharajas were personally occupied in the performance of the worship of their God. That resolution was proved to have been come to, in consequence of its being believed that immoral practices were taking place between the Maharaja and their female Bhattia devotees, under colour of the latter going at night to perform worship at the Vallabhacharya temples. Since that period, newspapers, pamphlets, and handbills in various languages in Bombay have very frequently denounced the pretensions of the Maharajas to divinity, have charged them with the grossest immorality, have held them up as objects for public reprobation, and latterly in 1859 have made use of the strongest and sometimes the coarsest terms, in describing their alleged profligacy of conduct and licentious vice. It also appeared in evidence that some Maharajas had committed acts of immorality and licentiousness to the knowledge of

witnesses who deposed to them, and whose testimony I do not see any reason to doubt. The plaintiff and Jeevanjee Maharaj in Bombay were stated in the plea to have admitted in the presence of some of the members of the sect the prevalence of the crime of adultery amongst their body, and also to have said, that great difficulty would be experienced in checking it, as the Maharajas derived the greater portion of their incomes from female devotees, and that no other sufficient means were provided for their support. Jeevanjee Maharaj was not produced to contradict or explain these statements, although his name is mentioned in the plea in connection with that fact, and the plea had been filed for nine months before the trial. The plaintiff denied the admission, but we feel no difficulty in discrediting that denial, and in believing that the conversation took place. The credibility of the witnesses who deposed to it was not impeached, and the character of some of them was such, that we do not feel at liberty to doubt their truth. We have therefore no hesitation in arriving at the conclusion that this portion, also, of the plea has been satisfactorily proved.

We now approach the last division of this plea, which so vitally affects the character of the plaintiff, not only for immorality of conduct but, for truth on his oath in a Court of Justice. Any one who was present at his examination, and the lengthened cross-examination which he underwent for the greater part of three days, must feel that, he is a man of great intelligence, and of considerable native attainment. Any contradiction to the testimony of other witnesses cannot have arisen from confusion or mistake; it must have been wilful and deliberate. He has contradicted in the most direct terms every charge of personal immor-

ality made against himself, every coversation approaching to an admission of immoral practices upon his own part or of licentious conduct of other Maharajas. In a conflict of evidence where there must be a wilful false swearing at one side or the other, it is desirable to select some one material fact upon which there is a clear and direct collision, and through it, to test the credibility of the witnesses at one side or the other. The plea charged as evidence of the licentions character of the plaintiff, that in the year 1860, he was suffering from a malady contracted from immoral intercourse with females. The defendants produced two medical men who were consulted by the plaintiff, Doctors Bhau Dajee and Dhirajram Dulpatram. Both are Graduates of the Grant Medical College, and the first at least long distingnished for his scientific, literary and medical attainments. It is but justice to those gentlemen to say, that they only gave medical evidence, upon the legal compulsion, which it was the duty of the Court to apply. Dr. Dajee states that the plaintiff sent for him professionally, and in giving a description of his ailment, made use of a term of familiar and unmistakeable medical meaning, which coupled with the history of its origin, left no doubt in Dr. Dajee's mind of the character of the disease. The plaintiff having then declined to submit to an ocular examination, informed Dr. Dajee that he would the next morning send Goverdhandass to give more accurate details. Goverdhandass was the confidential agent and manager for the plaintiff, and he next morning gave a description and history fuller but in substance and terms identical with that already given by the plaintiff. This agent and manager was in Bombay during the trial, and although several days elapsed between the evidence of Dr. Dajee and the close of the plaintiff's rebutting case,

Goverdhandass was not called to contradict or explain that evidence. Dr. Dalpatram who had been one of the Vallabhacharyan sect was consulted professionally by the plaintiff in about three months afterwards, and was in attendance upon him for more than a month. He treated the plaintiff for a similar disease, which was described by the latter as having been contracted by him from immoral intercourse with a female about the period when Dr. Dajee had been sent for. The plaintiff was cured by the treatment of Dr. Dalpatram after salivation, and upon Dr. Dalpatram's evidence, there could be no doubt as to the character of the disease, or as to the mode in which it was described by the plaintiff to have been contracted. Dr. Dalsukhram had the opportunity afforded him of the necessary medical inspection. Lakhmidass Khimjee, who is one of the leading men in the sect of Vallabhacharyas in Bombay, was at that time in the habit of daily intercourse with the plaintiff, and had been requested by the latter to bring Dr. Dajee (who is a Brahmin) to visit him professionally. He fully corroborates these two medical witnesses. Through the medium of conversations with the plaintiff, the latter described his malady by name, and the mode in which it was contracted, together with other details which it is not necessary to mention. It was further elicited in cross-examination that the plaintiff had undergone a medical examination on the preceding evening by three Doctors, with a view of sustaining his own denial of the existence of the disease and of the truth of the statements made by Drs. Dajee and Dalpatram and by Lakhmidass Khimjee. None of these Doctors were produced for the plaintiff to give an account of that recent examination. Upon this conflict of evidence between the plain-

tiff *alone*, and the three witnesses Dr. Dajee, Dalpatram, and Lakhmidass, coupled with the non-production of Goverdhandass, or any of the three medical men who made the last examination, I feel myself compelled to come to the conclusion, that the plaintiff has allowed his personal interests to overcome his respect for truth, while on his oath in this Court. And having reluctantly but confidently arrived at the conviction that he has in this instance wilfully foreswore himself, I can place no trust or reliance upon any denials he has given to the personal acts of immorality with which he has been charged. The character of the principal witnesses for the defendants have not been impeached. Many of them are members of the Vallabhacharyan sect, and still frequent the temples of the Maharaj It has not been suggested that they entertain any personal hostility to the plaintiff. They have apparently no personal interest to serve, but much caste or sect obloquy to undergo for the part they have taken, and the evidence they have given against a Maharaj. The account of Lukhmidass Khimjee in support of the charge of the plaintiff's immorality at Beyt is a strange and almost incredible story, but I cannot believe it to have been invented for this trial. In answer to the Court, he stated the names of four persons; members of the sect, in whose presence several years before he had detailed the circumstances he narrated in the witness-box. None of those persons were produced to contradict him, and when all of those who were in Bombay, were produced by the defendants for cross-examination, the plaintiff shrunk from impeaching, through their testimony, the truth of the statement of Lukmidass Khimjee. The plaintiff produced evidence to his good character for morality at

Surat, Beyt, and several other places in which it had been impeached. He also sought to establish the falsehood of the testimony of Lukhmidass Khimjee respecting the act of immorality at Beyt, by calling witnesses to shew that by night and by day, plaintiff had personal attendants waiting upon him, who never left him alone for an instant, and which rendered it improbable in the highest degree that he could have been guilty of the immoral act deposed to. That evidence is in itself contrary to all probability and is contradicted incidentally by the statement of Dr. Dalpatram, who in his professional treatment always saw the plaintiff alone. On examination of those witnesses, it appeared that the greater number were followers of the sect of the Maharajs. Some of them avowed that they believed the Maharajas to be incarnations of the Deity. Others, that they would not believe anything against the character of a Maharaj, that a Maharaj could not do anything wrong, that he could not be a bad man, and that it was a sin to give evidence against a Maharaj in a court of justice, and that any one who did, should not be spoken to and should be outcasted.

Bearing in mind the efforts that were proved to have been made to prevent evidence being given by his co-sectaries against the plaintiff in this case, and looking upon the description of that given for him, we cannot allow the negative character of the latter to outweigh the clear, strong, and direct evidence given for the defendant, under those difficulties.

We think that the essential points in the libel, as the record stands, have been sufficiently covered by the proof adduced in support of the

plea of justification, and that there must be a verdict for the defendant upon that issue.

As to the minor pleas, a verdict for the plaintiff will be entered on the 2nd, 4th, and 6th; and for the defendants on the 3rd and 5th pleas, in addition to the 7th and 8th.

After having found a verdict for the defendants upon the issue raised by the Plea of Justifications, the plaintiff can only recover a verdict for nominal damages on the plea of Not Guilty. As we have felt obliged to disbelieve the plaintiff on his oath and also the greater number of the witnesses produced to corroborate him, our verdict will be entered without costs.

The defendant to be entitled to the costs of the issues found in his favour.

Sir Joseph Arnould, in giving a judgment said :—

In this case I shall make no appology for stating at some length, the reasons for my judgment. In a matter of such general interest and importance the public have a right to be satisfied that the minds of both members of the Court have been actively engaged in sifting the evidence and arriving at a pains-taking and conscientious decision. I have, besides, on one point not been able to come to the same conclusion as the Chief Justice ; and though that point does not materially affect the vital question in the case, and relates not so much to the law itself as to the application of the law, it is yet too important to be passed over in silence.

1. On the first issue the question that arises in this: Is the article complained of a libel ; or is it so far justified by the occasion, i. e. by the whole of the circumstances preceeding and accompanying its publication, as to be, though defamatory, not *libellous*.

The doctrine of justifying occasion as deduced from the authorities is this ! The essence of libel is malice. *Prima facie* every publication containing matter tending to defame or criminate another is held to be libellous ;— that is—malice, the essence of libel is legally inferred from the mere fact of publishing of another that which tends to criminate or defame him. But this *prima facie* inference may be repelled; it may be shown that the circumstances under which the publication took place were such as to preclude the legal inference of malice arising from the mere fact of publication and to constitute a *justifying occasion* for publishing that which tends to defame and criminate another.

If such a justifying occasion be made out, the only enquiry remaining, in order to ascertain whether a given publication, be or be not libellous, is the enquiry whether the publication, *on the face of it*, shows what is legally called *express malice*; in other words, whether the virulence and bitterness of the language employed by the writer so far exceeds what the occasion warrants as to show that he was actuated by personal rancour, by a maligant and vindictive desire to criminate and defame. Unless this appears the publication though defamatory or criminatory is not llbellous (see the whole current of authorities from Rax vs. Baille 21 Howell's State Trials 10 (in A. D. 1778) down to Harrison v. Bush 5 Ell and Blackb. and 16 L J. Q. B. 25 (A. B. 1855)

As to what will constitute a justifying, occasion the points principally to be attended to are these : *First*. The publication must be *bona fide i. e.*, at the time of publication the writer must honestly and upon fair reasonable grounds believe that which he publishes to be substantially true. *Secondly*, the publication must be with regard to

a subject matter in which the party publishing has an *interest*, or in reference to which he has a *duty*. *Thirdly*, those to whom the publication is addressed must have an interest and a duty in some degree corresponding to his own.

The word *duty* here employed (as the late Chief Justice of England declared the law in Harrison vs. Bush)—is "not to be confined to *legal* duties which may be enforced by indictment, action or mandamus, *but must include moral and social duties of imperfect obligation.*" (*See the well-considered judgment of the Court of Queen's Bench as delivered by Lord Compbell in the case of Harrison vs. Bush. 16 L. J. Q. B. p. 29.*)

As to the *extent of the privilege or the justification*—that varies necessarily with the nature of the subject matter of the alleged libel; if it be a matter like the character of a servant, &c.—in regard to which only one person or only a few persons have an interest or duty corresponding to that of the writer, then he is only privileged or justified in communicating to that one or to those few; if, on the other hand, it be a matter in regard to which the general public has an interest and a duty—if it be a great social scandal and a great public wrong—if it be a matter in the exposure of which all society has an interest and in the endeavour to discharge and put down which all society has a duty—finally, if it be a matter beyond the cognizance of any other tribunal except the condemnatory judgment of public opinion—in such cases, the writer, if writing *bona fide*, is privileged or justified in making the communication as public as he can.

Such in my judgment are the principles of law applicable to the present case. In applying

them I propose to consider the following questions:—What was the defendant's professional and social position at the time, the alleged libel was published? What was his consequent interest and social duty in reference to the Subject matter of the alleged libel? What was his then state of knowledge and belief in respect to such subject matter? What or whom does he attack in the alleged libel? To whom does he address himself in publishing it? What was the immediate occasion of publishing it? Is the language in which the alleged libel is couched in excess of what the occasion warranted?

First then; *who or what was the defendant at the time of the publication of the alleged libel?* By brith and early initiation he was a member of the Vallabhacharyan sect, but for some years before the libel was published, in consequence mainly of his disgust at the practices which in the libel he denounces, he had ceased to worship in the temples of the Maharajas. For some time before the publication of the alleged libel he had been editor of the *Satya Prakash*, a native newspaper published in the Gujarati language, and principally read and circulated among the two wealthy and extensive castes of the Bhattias and the Banias. Both these castes are devout followers of the Maharaj: of the Bania caste the defendant was himself a member.

Such was the defendant's position, *what was his consequent interest and duty?*

As a Vallabhacharyan addressing his co-sectaries, as a Bania addressing his caste fellows—above all as a journalist addressing his readers composed principally of followers of the Maharajas, had he no interest, had he no duty in denouncing

the mal—practices which it is the principal object of this alleged libel to expose? It appears to me that he had both an interest and a duty.

A public journalist is a public teacher; the true function of the press, that by virtue of which it has rightly grown to be one of the great powers of the modern world—is the function of teaching, elevating and enlightening those who fall within the range of its influence.

To expose and denounce evil and barbarous practices; to attack usages and customs inconsistent with moral purity and social progress, is one of its highest, its most imperative duties. When those evils and errors are consecrated by time, fenced round by custom, countenanced and supported by the highest and most influential class in society, when they are wholly beyond the control and supervision of any other tribunal, then it is the function and the duty of the press to intervene; honestly endeavouring by all the powers of argument, denunciation and ridicule, to change and purify the public opinion which is the real basis on which these evils are built and the real power by which they are perpetuated.

As editor of the *Satya prakash*, the defendant was, in my opinion, acting within the clear limits of his duty (as defined in the case of Harrison vs. Bush) in denouncing to a public principally composed of Bhattias and Banias, the moral delinquencies of the Maharajas.

When the defendant published his alleged libel what was his state of knowledge and belief as to the matters of which it treats? To the defendant himself, a member of the Vallabhacharyan sect, and of the Bania caste, the profligacy of the Maha-

rajas had been known as matter of general reputation and universal notoriety, from his earliest years.

"It is" says he "the general reputation of our sect that when girls are married they are sent to the Maharaj to be enjoyed, before they are touched by their husbands. This has been the reputation as long as I can remember, "and" I have known instances."

When as a youth he had attended the temples he had seen Maharajas pressing with their feet the hands of their more favoured female devotees and, though young, he knew perfectly well what this meant.

He was cognizant of the fact that in 1855, those devout followers the Maharajas, the members of the Bhattia caste, had held a caste meeting, at which a resolution was passed " to fix hours at which their females should visit the temples; *that they might not have carnal intercourse with the Maharaj.* "

With regard to the plaintiff himself the defendant was informed before the publication of the libel, on what he had every reason to consider good authority; that his conduct formed no exception to the general conduct of his class.

" The general character of the Maharajas is that of debauchees; the plaintiff has also the reputation of a debouchee;" he was told this, before the publication of the alleged libel by Narmadashanker Lalshanker, his intimate friend, and who, as being in common with the plaintiff a native of Surat and for some time a resident there, had the amplest means of information as to the plaintiff's character.

The result of all this as to his *state* of *belief* when the libel was published is thus stated in his

evidence. "At the time I wrote the alleged libel, I believed the Maharajas individually and as a class, to be guilty of what I call defiling the wives and daughters of their devotees."

Although thus fully informed of, and on good grounds, firmly believing in the immorates of the Maharajas it was not until a short time (some four or five months) before the publication of the libel, that he saw reason to believe that these immoralities were sanctioned by the sacred books of the Vallabhacharyans.

It was about that time that he fell in with a popular compilation in the Marattha language, professing to give on account of the tenets of various sects, including those of the Vallabhacharyans.

The portions of this Marattha work relating to the Vallabhacharyans were supplied by defendant's intimate friend, the young Nagar Brahmin, Narmadashanker Lalshanker, who had shown the MSS. to the defendant before it was published.

In this Marattha compilation the verse of Gokulnathjee to which so much prominence is given in the alleged libel, is introduced thus:

"Besides this there are strict words of comment written in a book called the *Sidhant Rahsya* [this is the book which forms the text of *Gokulnathjee's* commentary] to the effect that "all things should be offered and presented to the *Acharya*" (i. e. the *Maharaj*) "and then enjoyed." It is then added, "To offer every thing means that even our wives, sons, &c., should not be brought into use without offering them."

From this publication the defendant would naturally infer that the commentary of Gokulnathjee enjoined the offering up of wives and daughters (for "daughters" are without dispute

included in the expression "sons, &c.") to the *Maharaj* by way of carnal intercourse.

The defendant did not understand Sanscrit, but he could read Brij-Bhasha; he forthwith began to study several Vallabhacharyan works in Brij-Bhasha. From these he derived the conclusion that the statement of doctrine in the Marattha compilation was borne out by the authoritative works of the sect.

As to the Sanscrit verse of Gokulnathjee, he satisfied himself, he says, from enquiry among those who understood Sanscrit, that its meaning is as set forth in the libel.

That meaning is set forth thus:

"Consequently before he himself has enjoyed her, he should make over his lawful wife *to the Maharaj* and he should also make over his sons and daughters; after having got married he should before having himself enjoyed his wife, make an offering of her *to the Maharaj*, after which he should apply her to his own use."

The friend to whom applied for this translation would seem to have been Narmadashanker Lalshanker, the young Brahmin who showed him the MSS. from which this part of the Marattha work was printed; who represented himself as having a through knoledge of Sanscrit, and who strenuously maintained in the witness box, that the meaning given in the alleged libel to *Gokulnathjee's* commentary was correct,—that the dedication there spoken of was a dedication not to the Supreme Being for spiritual purposes, but to his personification, the Maharaj, for carnal purposes.

It has been elaborately and learnedly contended that this interpretation is incorrect;

—that Gokulnathjee never intended, nor do his words, in their literal sense, import, the meaning thus put upon them. It may or may not be so: the question as to the precise grammatical meaning of the text, or the probable intention of the writer, does not go to the root of the present enquiry. It is not a charge of libel on *Gokulnathjee* that we are trying, but a charge of libel on the *Plaintiff*. The question is not what Gokulnathjee originally wrote or intended, but what in practice, his text of other similar texts have been construed to mean and perverted to sanction. It is abundantly clear on the evidence, as it will presently be necessary to show more at large, that the Maharajas have for a lengthened period been so far identified by their followers with Krishna—have been to such an extent regarded as Gods and worshipped as Gods, that it would be exceedingly difficult, if not absolutely impossible, to pronounce with any certainty, how far a text apparently contemplating a dedication to God, might or might not be regarded in the Vallabhacharyan sect as authorizing a dedication to the Maharaj.

This, however, is not a question we are called upon to decide. The question for us, on this part of the case, is whether the defendant when he printed this alleged libel in his paper, had or had not justifying occasion for publishing that the class to which the plaintiff belonged, and the plaintiff himself, as a member of such class, acting on the supposed sanction and authority of certain texts, whether rightly or wrongly understood, whether wrested from their true meaning or not, defiled the wives and daughters of their devotees.

That the defendant when he printed his interpretation of the text in the alleged libel honestly and *bona fide* believed it to be the correct one is

perfectly plain on the face of the evidence, and was not indeed seriously questioned by the learned Counsel for the plaintiff. Ignorant himself of Sanscrit (the language in which Gokulnathjee's commentary is written) he applied for assistance to those whom he honestly believed to be competent authorities, and the interpretation with which they supplied him he made use of in sincere and undoubting reliance on its accuracy.

Such having been the defendant's position, consequent duty and state of knowledge and belief at the time he published this alleged libel, the next question is, *what and whom did he attack?*

Primarily he attacks a flagrant social enormity and scandal. For generations the hereditary high priests of his sects had as he believed, committed whoredom with the daughters of his people. Like the sons of Eli they had done this openly at the gates of the temple—like the sons of Eli they had done this under the pretended sanction, and in the abused name of religion. This is the thing he denounces. It would be a waste of words to point out that in denouncing it, vehemently, bitterly, indignantly—he was within the strict limits of his duty as a public writer. The interests of Society require that wickedness such as this, should be sternly exposed and unrelentingly hunted down. If to write vehemently—bitterly—indignantly on such a subject as this be libellous, then were the prophets of old libellers—then were the early fathers of the Church libellers—then have all earnest men in all time been libellers, who have published to the world in the fit language of generous indignation, their scorn of hypocrisy and their hatred of vice.

Such is the *thing* the defendant attacks in this libel. *Who are the persons he attacks?* The class

who do this wickedness and the plaintiff as a member of this class ;—the Maharajas, and the plaintiff *as a Maharaj*. This is throughout the language of the alleged libel ; "In the Kali Yug (or iron age) many other heresies, and many sects have arisen, besides that of Vallabhacharya, but no other sectaries have ever perpetrated such shamelessness, subtlity, immodesty, rascality and deceit as have the sect of the Maharajas"—"You Maharajas, acting up to the commentary, defile the wives and daughters of your devotees."

He attacks the class as perpetrators of this great wickedness, he attacks the plaintiff as one of the class. It is said that in so doing he inferentially also defames him as an individual: I admit it, but I say the occasion justified it. A case had arisen in which the possible injury to the individual was not to be weighed in the balance against the great countervailing benefit, derivable to Society from exposing and denouncing the evil deeds of the class; and the acts denounced were immoralities, not of the plaintiff as an individual in his private life, but of the plaintiff as a Maharaj in this public life.

Then *to whom does the defendant address himself in making the attack?* To the public at large:—the only power, the only authority, the only tribunal to whom in such a case as this the communication could be made, or the complaint directed. The Maharajas, the hereditary high priests of the Vallabhacharyan sect are, in respect of the practices denounced in the libel, virtually amenable to no jurisdiction, spiritual or temporal, criminal or civil. As far as the evidence before us goes, they appear to constitute a co-equal brotherhood of 65 or 70 members, owning a vague and shadowy sort of allegiance

to a nominal superior at Shri Nathjee—a remote shrine among the deserts of Marwar. This nominal superior appears to be a careless and Epicurean sort of God; no instance of his interference was adduced before us; practically each Maharaj does as seems good in his own eyes, especially as relates to the abomination which it is the peculiar object of this alleged libel to expose.

From the tenor of the evidence I thought, at one stage of the enquiry, that *Jeewanjee* Maharaj (a high priest who appears honourably distinguished among his brethren for learning, piety and comparative purity of conduct) I was led to think that *Jeewanjee* acted in Bombay as a kind of superior or principal over the other Maharajas, who from time to time came down here to officiate. But I was wrong: *Jeewanjee* was merely an equal among equals, when appealed to by some of the most respectable Vallabhacharyans in Bombay to interpose and put a stop to these practices, his answer was that he could do nothing. He admitted the alleged immorality; he deplored it; but he could not interfere with his brother Maharajas to prevent it: "Every man," he said "is master in his own house; all my fellow Maharajas here are my equals in rank, some of them my superiors in age, what can I do?"

As there was no available *spiritual* tribunal, so neither was there any *criminal* or *civil* tribunal which could take cognizance of these immoralities of the Maharajas. It was profligacy, it was vice, but it was not *crime*, it was not *civil wrong*, of which they were accused. There was no violence; there was no seduction. The wives and daughters of these sectaries, (with their connivance in many cases if not with their approval), went willingly—

went with offerings in their hands, eager to pay a high price for the privilege of being made one with Bramha by carnal copulation with the Maharaj, the living personification of Krishna.

To what quarter then was a Vallabhacharyan in Bombay to look for redress or reform if he felt aggrieved at these misdeeds of the Maharajas? He had one resource and one only; to appeal to *Public Opinion through the Press*. This the defendant did; as a Vallabhacharyan it was his *right*, as the editor of a native journal it was his *duty* to do so; for if evils such as these were, (in the language of Lord Ellenbourgh) "to exist for ever without public animadversion, one of the great uses of a free press is at an end." (*I Campb. 117,*)

And the public which thus constitutes the only tribunal to which the defendant could appeal had an *interest* and a *duty* in relation to the subject matter of the alleged libel, corresponding to his own. No public can be conceived to exist which has not an *interest* in the discouragement and suppression of such wickedness—upon which there is not imposed a *moral* and *social duty* of taking all legitimate means for its discouragement and suppression. The offence attacked in the alleged libel is an offence against the first principles of morality on which all society is based, and in the suppression of which the highest *interests* and the highest *duties* of all Society, as such, are most intimately concerned.

If while writing with a single purpose to discourage and suppress this evil, the defendant, in the course of reflecting on the class to which the plaintiff belonged and on the plaintiff as a member of that class, published that which by inference, was defamatory of the plaintiff *as an individual*,

the occasion, in my opinion, justified him in so doing, that the defamatory matter, so published, is no libel, unless it can be shown either that he wantonly *singled out the plaintiff for attack*, or, *unless his language was an excess of what the occasion warranted.*

Now did the defendant *single out the plaintiff for attack?* On the contrary it is clear *that the immediate occasion of the attack, (if attack it can be fairly called) on the plaintiff, arose out of the plaintiff's own act in having himself had recourse to the press for the purposes of controversy.* This is plain on the face of the libel itself, and is put beyond all doubt by the evidence. The plaintiff had for some time been publishing a series of articles of a controversial character in the Bombay press, in some of which the defendant as a writer on the opposite side, was or fancied he was reflected upon: Some of those articles the plaintiff through his secretary Goverdhandass, had sent and caused to be inserted in the defendant's own paper the *Satya Prakash*; others had appeared in the *Chabook*, and other native newspapers; others again were published in the *Swa-dharma-vardhak* ("The Propagator of Religion") a monthly periodical of which the plaintiff was the originator and principal manager.

There can be no doubt on the evidence that the prominence given to the plaintiff among all the other Maharajas in the alleged libel, is owing to two articles of the plaintiff's (or which the defendant supposed to be the plaintiff's) and which appeared, the one in the *Chabook*, the other in the *Swa-dharma-vardhak* on the 16th and 29th Sept. 1860.

In these articles, says the defendant, "the Maharaj had spoken disparagingly of the re-

formers who write without quoting the Shastras." "I therefore," he goes on "proceeded on that hint to write according to the Shastras and produced the article which is the subject of the present action *on the primitive religion of the Hindus.*"

The alleged libel was published on the 21*st October* 1860.

The title is "On the Primitive Religion of the Hindus."

It commences by citing the Shastras (the Veds Purans") to show that in the Kali Yug (or iron age) many heresies and false religions will arise, but the Kali Yug began 5,000 years ago and the Vallabhacharyan sect sprang up less than 400 years ago; it is therefore (the logic is somewhat at fault here), a heresy.

He then cites from one of the plaintiff's September articles a passage in which the plaintiff represents the different modern sects as so many extensions, not divergencies from the old religion, "just as some leave the Fort to proceed to Byculla others to Walkeshwar."

The defendant critises this illustration and then returns to his former point that the recent date of the Vallabhacharyan sect proves it, on the authority of the Hindu Shastras, to be heresy.

Then he adds, "Thus as regards the weapons with which the Maharaj has come forth to defend himself, those very weapons will oppose the Maharaj and annoy him."

Then follows Gokulnathjee's verse and the indignant comments on it; and then comes the conclusion of the article, *which upon the evidence as presented by the plaintiff and apart from the*

fresh light which has been thrown upon the case by the evidence for the defendant, the Court, on the application to nonsuit, considered to be *prima facie* libellous.

"Jadunathjee Maharaj (the plaintiff) *has commenced issuing* a small work styled, 'The Propagator of our own Religion.' We ask him, in what way do you wish to effect the propagation of Religion? Your ancestors, having scattered dust in the eyes of simple people, made them blind: Do you wish to make them see; or, taking a false pride in the upholding of your religion, do you wish to delude simple people still more?

"Jadunathjee Maharaj! should you wish to *propagate or to spread abroad religion,* then do you personally adopt a virtuous course of conduct, and admonish your other Maharajas, that as long *as the preceptors of religion shall themselves appear to be immersed in the Sea of Licentiousness, for so long they shall not be competent to convey religious exhortation.* Gokulnathjee, having composed the commentary above mentioned, has attached to your Vaishnava persuasion a great blot of ink. Let that be first removed; scorn the writer of the commentary. You Maharajas, acting up to that commentary, defile the wives and daughters of your devotees. Desist from that and destroy at once immorality such as that of the company as the Ras festival. *As long as you shall not do so, for so long you cannot give religious admonition and propagate your religious faith. Do you be assured of that.*"

It is not plain that the whole of this portion of the alleged libel is addressed prominently and pointedly to the plaintiff, simply because the plaintiff had put himself prominently forward as the originator and editor of the periodical called the "*Propagator of the Faith*?" Is it not

clear that the plaintiff's voluntary appearance before the world in that capacity is the key-note to the whole of this part of the article.

From the whole frame work of the alleged libel as explained by the evidence, the unavoidable conclusion is that the prominence given to the plaintiff throughout the article is not forced, groundless and malicious, but is the natural result of his having himself entered into the lists of controversy as a champion of Vallabhacharyan orthodoxy, and a Propagator of the Vallabhacharyan faith.

Then, lastly, is there on the face of the libel any evidence of *express malice*—is there personal rancour—is there an excess of bitterness—is there an unfair singling out of the plaintiff with a hostile desire to defame, to criminate, to malign? I can see nothing of the kind.

The plaintiff is *not* singled out; he had volnutarily put himself forward as the champion and defender of the Maharaj cause.

The attack is primarily on the class to which the plaintiff belongs; incidentally the plaintiff bears the main brunt of the battle as being the one amongst that class who had invited attack by making himself its representative.

The attack is on acts hostile to public morality done by the plaintiff not in his private capacity, but as Maharaj. The main object is *not to attack at all, but exhortation*, earnest entreaties to lead a puren life and desist from licentious practices, and *that with a view to the more successful propagation of religion*.

The paramount motive, as deducible from the writing itself, is not personal rancour against the plaintiff; but an ardent desire to put an end to a flagrant and shameful licentiousness, in the

suppression of which the defendant and his co-religionists were vitally interested, and in the practice of which he had honest and *bona fide* reason to believe that the plaintiff, like all the other members of his class, was implicated.

I agree with Dr. Wilson in thinking that "all things considered, the alleged libel is a very mild expostulation," involving "an appeal to the principle that the preceptors of religion, unless they purify their lives, cannot expect success to attend their labours."

I agree with Dr. Bhau Dajee that any reader of fair "average intelligence would understand the main object of the writer to be, not to make a personal charge of mal-practices against the plaintiff, but to address a general exhortation to the class to which the plaintiff belongs, to desist from such mal-practices."

On these grounds I think there is no proof of "*express malice*;" on the grounds previously stated I think there was a "*justifying occasion.*"

I think the defendant, from his position and *status*, not only had an *interest* and acted on a right, but also fulfilled a moral and social *duty*, in denouncing a geat iniquity;—I think he took reasonably sufficient care to inform himself of the facts before he published, and that what he published he, at the time, *bona fide* believed to be the truth;—I think that, in addressing himself to the public he appealed to the right, and under the circumstances, to the only available tribunal;—he appealed to those who, in relation to the subject-matter of the alleged libel had an *interest* and a *duty* corresponding to his own;—I think that in giving the plaintiff the prominence he has done in his article he was actuated by no malice, but simply dealt with the plaintiff as he found him,

the representative and champion of his class;—I think that in the language of the article itself there is no evidence of personal malice or malignity, but strong evidence of a public spirited desire to denounce and put down a crying scandal and wickedness which was a stain upon the credit of the writer's caste—on the name of his nation—on the dignity and honour of human nature itself.

For all these reasons I am of opinion *that the article complained of is no libel,* and therefore that on the first issue the verdict ought to be for the defendant.

II. The other great issue—(for on the minor points, on which I entirely agree with the Chief Justice, I shall add nothing to the reasons he has adduced in disposing of them)—the other great issue in this case is on the plea of justification. On this issue I am of opinion that every material averment—every averment which in any way relates to the nature of the Vallabhacharyan sect; the character and position of the Maharajas in general, and of the plaintiff in particular, is substantially proved.

I. shall distribute the remarks I feel called upon to make on this issue under four heads.

First:—The evidence adduced as to the nature and tenets of the Vallabhacharyan religion.

Secondly:—The evidence as to the light in which the Maharajas are regarded by the sect of which they are the spiritual chiefs.

Thirdly:—The evidence as to the general character of the Maharajas for licentiousness.

Fourthly:—The evidence as to the personal immoralities of the plaintiff.

1. As to the nature and tenets of the Vallabhacharyan religion. On this topic it is

not my purpose to make any lengthened remarks; the passages cited in the plea of justification have been proved and verified; that is, they have been shown to be genuine extracts correctly translated from works received as authorities to a geater or less extent in the Vallabhacharyan sect. But it is obviously impossible to form any thing like an adequate judgment of any religious system on any mere series of extracts, especially when selected with an avowedly hostile object. It is only certain broad and general conclusions at which, aided by the very learned evidence adduced on this point, we can with any safety or satisfaction arrive.

Dr. Wilson, who has studied this subject with that comprehensive range of thought, the result of varried erudition) which has made his name a foremost one among the living Orientalists of Europe, Dr. Wilson says.

"The sect of Vallabhacharya is a new sect, inasmuch as it has selected the God Krishna in one of his aspects, that of his adolescence—and raised him to supremacy in that aspect."

"It is a new sect in as far as it has established the *Puhshti marg*, or way of enjoyment in a natural and carnal sense."

This succinct statement seems to contain the essence of the whole matter. It is Krishna, the darling of the 16,000 Gopees (or shepherdesses); Krishna the love-hero—the husband of the 16,000 princesses, who is the paramount object of Vallabhacharya's worship. This tinges the whole system with the stain of carnal sensualism, of strange, transcendental lewedness. See, for instance, how the sublime Brahminical doctrine of unition with "*Bramha*" is tainted and degraded by this sensuous mode of regarding the Deity.

According to the old Brahminical tenet, "BRAMHA," the All-containing and Indestructible, the Soul of which the Universe is the Body, abides from eternity to eternity as the fontal source of all Spiritual existence; reunion with Bramha, absorption into Bramha, is the beatitude for which every separated spirit yearns, and which after animating its appointed cycle of individuated living organisms, it is ultimately destined to attain. The teachers of the Vallabhacharyan sect do not absolutely discard this great tenet, but they degrade it. I have no wish to wade through all the theosophic nonsense and nastiness of the plaintiff's own chapter on "Adulterine Love;" but one of the myths he thus cites on the authority of the *Brahad Vaman Purân*, perfectly illustrates what I mean. For many ages the incarnations of the *Veds* prayed Shri Krishna, the most Excellent Being, for a sight of his form; the wish being granted, desire was produced in them and they prayed to Krishna to satisfy their hearts' desire, so that they might enjoy with him in the *form* of *women*; this desire also was granted, and the traditions, under the form of women enjoyed Krishna as Gopees with adulterine love in the mythical forest of "Vrij."

The comment of the plaintiff (for he is without question the writer or dictator of this article) upon this is, that if there were any sin in adulterine love Krishna would not have turned these Veds into Gopees for the purpose of enjoying them;—but there *is* no sin in such love when its object is God; for "God is all form. He is in the form of father, and he is in the form of husband; he is in the form of brother; and he is in the form of son. In whatever shape one may wish to love God, his wishes are complied with accordingly."

Thus then is the pure and sublime notion of the reunion of all spirits that animate living but perishable forms, with the Eternal spirit, not limited by form debased into a sexual and carnal coition with the most sensuous of the manifestations or "avatars" of God.

But it goes further than this; unition with Bramha in the Kali-Yug (or Iron age) being no longer possible through the medium of mystical intercourse with Krishna; it must be obtained in some other way.

The witness Mathuradass Lowjee explains in what way; this to what he says:—

"The connection with Bramha (necessary to the soul's "becoming one with Bramha) in the Kali-Yug is only possible through the Maharaj. The connexion is to be had by carnal intercourse between the Maharaj and the Vaishnavas—the female devotees of the Vaishnava persuation."

This then is the order of descent; spiritual unition with Bramha; mystical coition with Krishna; carnal copulation with the Maharaj. For, as Dr. Wilson says, and as we shall see more at large under the next head of evidence. "The Maharaj is considered by a great many of his followers as an Incarnation of God, as God incarnate according to Hindu notions, which are puculiar on that subject. The Vallabhacharyans hold that Vallabhacharya and his official descendants are incarnations of the God Krishna, without holding that there is a complete embodiment of him in any one of them."

The religion which thus degrades the pure idea of spiritual re-union with God, into the gross reality of carnal copulation with its hereditary high priesthood, appears from the evidence to be sensuous in all its manifestations. *Ras-lila*, or

"amorous dalliance" is held forth as the highest bliss here. *Ras-lila* is the principal employment of Paradise hereafter; one of the many amatory names of the Maharaj is "Ocean of *Ras-lila*;" and when a Maharaj expires he is not said to die, but to extend himself to an immortality of *Ras-lila*.

The hymns or sacred songs of a sect are generally the most fervid exposition of their religious feelings. The hymns sung by the women of the Vallabhacharya sect in honour of the Maharajas and in their presence are certainly no exception to this general rule. They are passionate with all the passion of the East—Erotic pantings for fruition of a lover who is also a God; as it is said of the Gopees in the *Vishnu Puran*, "every instant without Krishna they count a myriad of years, and forbidden by fathers, husbands, brothers, they go forth at night to sport with Krishna the object of their love." So these hymns sung at this day, as the plaintiff admitted, by the wives and daughters of the Vallabhacharyans to their Maharajas express the most unbridled desire, the most impatient longing for the enjoyments of adulterine love.

"I have often," says Mathuradass Lowjee, "heard songs of an adulterous character sung by females before the Maharaj"—"Improper songs in favour of adultery," says Khattaw Mucconjee, "very shameful and indecent"—"your followers," such is the purpot of the songs, "say that they are our husbands, but in fact you are our husband."

Several translations of these songs were before us, and they quite bear out the character thus given: I give a few extracts—

"An excitement extreme and great in my body is created."
"The azure-coloured beauteous husband with me is sitting."
"Without seeing his beauteous face even water will I not drink."

"The amorous and beauteous husband by seeing oft I will live."
"Restrain me not, oh my mother,"
"To pay my homage to him daily I will go."
"As to connectionship that of Krishna appears the only true one."
"And all others seem to be imperfect."
"He who tells may tell, we will permit him to do so,"
"And to him in indifference we shall listen."
"For your sake the sense of public shame I have not entertained;"
"The descendant of Vallabh is the amorous Kama,"
"To that dear soul having become a female slave."
"The sense of public shame no longer will I fear."
"The descendant of Vallabh is the amorous Kama."
"The sound of the jingling of his toe-rings has deprived me of my heart."
"The very personification of God you are."
"Having married the Vallabh husband with extreme love,"
"By our submitting to the Vallabh husband happy we shall be."
"By his association the Vaikunth (Paradise) we shall gain."

There is only one point left for consideration under this head, and that is, how far works regarded in the Sect as authoritative claim for the Maharajas the attributes and the worship of Gods.

As to this there can be no doubt that the extracts proved at the trial fully bear out the correctness of those set out in the plea of justification.

"Whoever holds his spiritual guide and Shri Thakurji (or God) to be different and distinct shall be born a "*Sichana*" (a kind of bird).

"We should regard our Guru as God, may, as greater than God. For if God gets angry the Gurudev is able to save us from the effect of God's anger, whereas if the Guru is displeased nobody is able to save him from the effect of the Guru's displeasure." "Therefore God and the Guru are necessarily to be worshipped." The "worship of the Guru is to be performed in the same way as the worship of God." "In this world are many kinds of creatures. Of them all the most fortunate are we who have sought the protection of the illustrious Vallabhacharyans, Shri Gosainji

and their descendants, *who are manifestly incarnations* of God, the Excellent Being himself."

It is not necessary to go further; these passages claim for the Maharajas the same worship as is paid to God; they claim for them also the character of incarnations of God.

If these things are sanctioned by the authoritative works of religious sect—if union with God is figured under the emblem of sexual intercourse; if love for God is illustrated by the lustful longing of the adulteress for her paramour; if paradise is spoken of as a garden of amorous dalliance;—finally, if the hereditary high priests of the sect are directed to be worshipped as Gods and reverenced as the Incarnations of God—it is not a matter of surprise that the ordinary devotees should make little practical distinction between Krishna and the Maharaj—that they should worship the Maharaj with blind devotion; and that their wives and daughters should freely give themselves up to his embraces in the belief that they are thereby commingling with a God.

II. It remains to be seen upon the evidence adduced at the trial how far these teachings are carried out in practice; and these brings me to the second head of enquiry, viz. *in what light are the Maharajas actually regarded by their sectaries?*

On this point the evidence is ample; there is the evidence of the witnesses called in the first instance to launch the plaintiff's case; there is the evidence of the defendant's witnesses; the evidence of the witnesses called by the plaintiff in rebuttal of the plea of justification; and the evidence of the plaintiff himself.

The witnesses called in the first instance for the plaintiff were much more candid and explict

in their disclosures on this point than those who were called in rebuttal of the defendant's case. The latter from the stereoryped uniformity of their answers on certain points, and from the cautious restraint with which they spoke on others, had evidently been warned and tutored against being surprised into admissions that might be damaging to the plaintiff's cause. There was none of that caution about the earlier witnesses. What says Gopaldass Madhavdass, one of the most respectable of these witnesses?

"We fall prostrate before the Maharaj, and offer incense and flowers and money to him. Light is waved before him" (as it is to the image); "the female devotees worship him by swinging him in a swing:" "Some people in the sect say the Maharajas are Gods; others deny it; some Bhattias ond some Banias believe the Maharajas to be Gods. Then follows an admission of certain disgusting and degrading observances:

The devotees take *pan-supari* after it has been chewed by the Maharaj and swallow it:" "They drink the water in which his dirty *dhoti* has been washed:"—"They call the water in which the Maharaj has put his toe the Nectar of the feet."

Varjeewandass Madhavdass (the brother of the last witness and a Justice of the Peace), says—"Some Banias believe the Mabaraj to be God as well as Guru:" When Maharaj dies it is said of him he is gone to *Ras Lila Bistara*, an extension of amorous sport: When the Maharaj bathes himself I put saffron scent on his body: "This is on festivals:" "The image is bathed on holidays with the same ablution: "People in our sect perform menial offices for the Maharaj:" "I, though a Justice of the Peace, once sat on the

coach-box and drove the Maharaj among the shoutings of the people."

So much for the witnesses called in the first instance for the plaintiff; those called for the defendant brought forward a mass of evidence on the same point from which I will extract the more important passages.

The defendant himself says, "The Maharajas are considered by their followers as incarnations of Krishna, as the very personification of the excellent Being:" "I have seen the devotees worship the Maharaj as God by waiving light, swinging, prostration, &c. I have seen the managers of the Maharajas giving water to the Vaishnavas to drink in which the Maharaj had bathed; it is from these things and from what they generally speak among themselves that I infer they regard the Maharajas as Gods."

Mr. Narayan Dinnanathjee, one of the principal Interpreters of this Court, (but who in the interpretation which he permitted himself to give of the words "Bebhichar" and "Soorut," was, for the moment, more mindful, I fear, of his admitted friendship with the respectable High priest *Jeevunjee*, than of the strict line of his professional duty)—*Mr. Narayan Dinnanathjee* was eager to estabish that the Maharajas in the Vallabhacharya sect were merely regarded as Gurus, and that "like the Gurus of all other sects, they are worshipped with the same forms and ceremonies as the image, but not as Gods." But in cross-examinations this gentleman was compelled to allow that "no other sects besides the Vallabhacharyan have *hereditary* Gurus by natural descent or adoption;" that in other sects Gurus are sexually ascetic;" that "eating chewed *pan-soopari;* drinking the nectar of the feet; swinging, rubbing and

bathing the body with oils; eating the dust on which they have walked, are not practiced towards the Gurus of other sects."

I shall only add the evidence of two more witnesses for the defence; that of *Mathuradass Lowjee*, and that of *Dr. Bhau Dajee*.

Mathuradass Lowjee, a grave and reputable person, earnest, of considerable reading, and unimpeached honesty; a Vallabhacharyan by sect and a Bhattia by caste—gave the following evidence as to the point now under consideration:—

"Puran-Purushottam is worshipped as God who is in Paradise; his incarnations are Vallabh, Vitalnathjee and their descendants: Vallabh was the incarnation of the head of God." [In this apperently extraordinary statement of doctrine this witness is borne out to the letter by the plaintiff.] "The Maharajas are regarded as the incarnation of God;" "the terms *Puran Purushottam* and *Maha-Prabhu* (Supreme God—Mighty God) are applied to the present Maharajas, especially in the act of worship: The major part of the Bhatia caste do worship the Maharaj as God and worship the pictures of each of the Maharajas and repeat their names as 'Jeewanjee,' Juddanathjee!') in the act of worship, and worship them in a variety of ways. It is such worship as is enjoined in our books, for the most part it is the same worship as that of God in Paradise; there is no such worship in any other sect; they touch his feet; they swing him in a swing; there is a necklace put round his neck as there is round the neck of the idol: they take up the dust on which he as trod and put it into their mouths: When they worship they cry "Maha Prabhu" "Shri Prabhu" &c. "In doing all this I will swear they worship

the Maharaj, because the image is inside. Some members of my own family, my brother for instance—believes the Maharajas to be Gods. The Maharajas obtain their Godship from birth, without reference to qualities of body or mind, or whether they may afterwards turn out to be ignorant, debauched, or otherwise."

The last evidence for the defence I shall cite on this point is that of Dr. Bhau Dajee—a gentleman who in learning, freedom from prejudice, and general superiority of mind is among the foremost, if not *the* formost of the native citizens of Bombay. This gentleman, by caste a Brahmin, is not a Vallabhacharyan by creed, but he has a very extensive medical practice among the more wealthy members of the sect, and has attended all the Maharajas who for the last ten or twelve years have visited Bombay.

Dr. Bhau Dajee says:—"The majority of their followers regard the Maharajas as incarnations of Krishna; they are worshipped as such, I have seen them worshipped." After the Maharaj has worshipped the image his followers worship him; more time is devoted to the Maharaj than to the image. I have seen women put their hands to the soles of the Maharajas feet and then apply them to their eyes; I have seen the water of the bath of the Maharaj distributed to his followers; and I have seen them crowding in hundreds to drink it."

Such are a few of the passages from the evidence of the witnesses originally called for the plaintiff, and of the witnesses for the defendant as to the light in which the Maharajas are regarded by the devout majority of their followers. To oppose this we have the evidence of the witnesses called by the plaintiff to rebut the plea justification, and the evidence of the plaintiff himself.

As to the evidence of these witnesses; I may say generally that, except when it consisted of admissions indiscreetly made, it produced very little effect on my mind. These witnesses all knew perfectly well that they had to deny certain specific allegation that the Maharajas were regarded by their followers as Gods, or as Incarnations of God. The mode in which they gave their testimony as to this point the uniform and set styles their answers to certain evidently expected questions, necessarily led to the inference in any mind, accustomed carefully to scrutinise testimony, that they had been tutored and trained as to the evidence which on this point was expected from them. That evidence was to the effect that they regarded the Maharaj *as Guru, not as God.* In their examination in chief they kept pretty steadily to the mark; bnt on cross-examination they were more than once incautiously betrayed into the expression of their real feelings and genuine belief, because it was impossible now to draw this inference from the spontaneous earnestness of the one set of replies when constrasted with the forced, parrot-like manner of the set of replies. "I love my Guru said one of these witnesses—*Purushottamdas Dayaram*—"I worship him as I should God." "It is not possible" said another *Gokuldass Keshawdass*—"It is not possible for a Maharaj to commit sin." "I regard the Maharaj as my Guru" said *Bhaichand Kevalchand* —"we regard him in the place of God; I regard him as an Incarnation of God."—"I regard the Guru" said *Mansukhram Narottam* "as an incarnation of God; the Guru would not commit sin; I cannot say whother what would be sinful in other men would be lawful in the Guru." If we turn from the evidence of his witnesses to the evidence of the plaintiff himself on this point, what do we find?

—a series of categorical negations absolutely neutralized by an important admission. "I am not" he says "an incarnation of God. I do not know that any of my followers regard me as an incarnation of God: I know they ought to regard me as a Guru. They worship me as Guru; as those who cause happiness through God;—as guides to God: I have heard no one say we are worshipped as Gods! but because we give religious instruction they worship us as Gurus."

Such are among the principal of the plaintiff's positive denials of the imputation that any of the sectaries worshipped the Maharajas as Gods, or as incarnations of God. But he too, with all his craft and caution, was compelled, under the pressure of cross-examination, to make an admission entirely fatal to the position thus taken up: the admission, viz. that till he taught them better some of the sectaries even in Bombay did beleive in the doctrine which he had previously denied that any of the sectaries ever believed in any where, or at any time.

"I have instructed my disciples" he says "that except two of the Maharajas Vallabh and Gosainji —whom I regard as incarnations of *Ishvar* (God) they should regard us as Gurus and not as Gods." As to Vallabh, the founder, the plaintiff agrees verbatim with *Mathuradass Lowjee* in the apparently extraordinary statement of doctrine, that "he is regarded *as the incarnation of the head of God;*" but as to all his other descendants, except Gosainji "I have taught the people" says the plaintiff that "they should regard us as Gurus only. *I prevented all persons from believing such a doctrine* (as that *all* the descendants of Vallabh were incarnations of God) *until I prevented them they did believe it: when I came here some persons*

believed it and some did not; the majority did not, the minority did." !

What then on this point is the result of the whole evidence? In my opinion it is this:—

First: That many passages in the religious works of these sectaries authorize the doctrine that the Maharajas are incarnations of God and ought to be so regarded and worshipped by their followers.

2ndly. That in practice they are regarded and treated, at all events by the less reflecting portion of the Vallabhacharyan sect as a sort of God-like, powerful, and mysterious beings who cannot commit sin, who are to be worshipped with divine honours, and whose persons are so sacred that observances which with reference to mere mortals, would be infinitely disgusting, become pious and meritorious acts when done towards the Maharaj.

The two next heads under which I propose to examine the evidence in support of the plea of justification, are,

3rdly. *The evidence as it relates to the general immoralities of the Maharajas.*

4thly. *The evidence as it relates to the particular immoralities of the plaintiff.*

Before going into this, a few general observations must be made on the comparative value and credibility of the three principal classes of testimony with which we have to deal, viz., 1, The testimony of the witnesses for the defendant. 2. That of the witnesses for the plaintiff. 3. That of the plaintiff himself.

First, as to the witnesses for the defendant, it is impossible to have presided at this lengthened

trial without becoming aware, not only by the positive evidence tendered, but by the demeanour and bearing of the crowds by which from day to day the Court was thronged, that the defendant and his witnesses gave their evidence on the unpopular side. The religious animosities of the sect, the social prejudices of the caste, the personal hatred and alienation of former friends, were all arrayed against them. They had to face sectarian obloquy and caste exclusion. They were not free even from the risk of personal assault. I will take two passages from the evidence given by the witnesses for the plaintiff to show the nature of the feeling that was arrayed against them. "Two persons came to me," says *Gopaldass Madhowdass*, "on the subject of outcasting the defendant for writing about the Maharajas in the newspapers. They said 'as the Bhattias have made a bundobust we (Banias) should make one also." This was one or two days after the Bhattias had put their signatures to a paper got up to intimidate people from giving evidence in this case—the bundobust I mean which was made a subject of prosecution for conspiracy in the Court last Criminal Sessions. The two persons who came to me were Purbhudass and Jeykissondass: they, I, and the defendant are all Banias."

Damodar Madhowjee said:—"If any member of Vallabhacharyan sect is found to entertain opinions adverse to the rest of the sect, we should not believe him: we should have no intercourse with him; he would be isolated in his own house; we should remain aloof from him. I would regard persons who think the Maharajas guilty of wicked practices as *outcastes; I would not speak to Lakhmidass Khimjee and Mathuradass Lowjee, because they have given evidence here against the Maharaj.*"

To those who consider how little the Hindu is accustomed to independent thought and independent action—how his whole life is circumscribed within the sphere of the family or the caste—how entirely the whole social happiness not only of himself but of those nearest and dearest to him is blighted by that terrible penalty of outcasting—(equivalent to the excommunication of the middle ages)—those who think of these things will probably be of opinion that nothing but a strong belief in the truth of what they have stated, and a firm conviction of the duty of stating it, could have impelled the witnesses for the defendant to come forward as they have done on his behalf. For the majority of these witnesses are not students, or editors, or non-believers, they are grave, reputable middle aged, family men, having a firm belief in the teachings of their ancient religion and a profound reverence for the authority of their ancient scriptures.

Lakhmidass Khimjee, one of the twelve leading Setts of the Bhattia caste—*Mangaldass Nathoobhoy;* the Bania Justice of the Peace, the well known founder of Hindu Girls schools—*Khattow Maccanjee, Mathuradass Lowjee*, and other witnesses of that stamp, are hardly likely to have come forward to give evidence they did not believe, in order to encounter general odium in the sect and determined dislike in their caste. Dr. Bhau Dajee is not indeed a member of the sect or caste, but he has enjoyed an extensive and lucrative practice among the wealthy Vallabhacharyans, and for the last ten or twelve years has attended every Maharaj who, during that period, has visited Bombay. It is scarcely probable, on the ordinary principles of human nature, that, Dr. Bhau Dajee, by the evidence he has given, should risk the loss of such a practice, except from a firm conviction

that what he had to say was true, and that, being true, he ought to make it public. On the whole the fair inference as to the evidence for the defendants is, that being given at considerable risk and at considerable sacrifice, it would only be given under a sense of duty founded on a firm conviction of its truth and of its public importance.

The evidence of the witnesses for the plaintiff stands on a totally different footing. It is true these witnesses, with the same care with which they denied all knowledge of the fact that the Maharajas were ever regarded in any way except as Gurus, were sedulous to declare their conviction that if they ever saw or heard of any misdoings of a Maharaj, *it would be their duty* to tell the truth openly and not scruple to reveal the secrets of their Guru. But the value of these declarations was considerably impaired by the circumstance that several of these witnesses swore that till they came into Court they had never heard the morality of the Maharajas called in question, and that others declared that even if they had heard such reports they would not have believed them. "It is not possible for a Maharaj to commit sin" says *Goculdass Kessowdass*. "Every Maharaj is a good man," says *Hargovindass Moolchand*, "a Maharaj cannot be a bad man: if I heard any report against the moral character of a Maharaj I would not believe it, nor could a Maharaj be guilty of bad conduct." "If" says *Narrottamdass Harribhai* "I heard a report of the licentiousness of a Maharaj, I should not believe it. A Maharaj would not do bad acts."

It is important to bear these expressions in mind when we consider the *nature* of the evidence given by the plaintiff's witnesses as to the part of the case now under consideration. It is all

purely *negative* evidence. It amounts to this: you the witnesses for the defendant say the Maharajas generally bore a bad character; we the witnesses for the plaintiff say we never heard of it. Again; you the witnesses for the defendant say the plaintiff himself bore a bad character at Surat, at Beyt, at Dwarka: well we are witnesses for the plaintiff—some of us came from Surat, some from Beyt, some from Dwarka, one or more of us from every place in which you have proved affirmatively that the plaintiff bears a bad character, and we say that we never heard of such bad character. In any case this negative evidence amounts to very little, for it is obviously quite possible that the negative and affirmative evidence may both be true. It is obviously no contradiction of a man who says of another that he bore a bad character at such a place to bring forward a third man, or, (if the place be a large one) half a dozen other men to say they never heard of such bad character. But when amongst those called to give this species of evidence you find a variety of persons who admit they would pay no attention to, nay, would disbelieve, the bad character if they even heard it, then this species of evidence, at the best singularly inconclusive, becomes for all practical purposes of absolutely no value whatsoever.

There is another consideration, if another were wanting, to show how little weight is to be attached to the evidence on this part of the case, of the witnesses for the plaintiff. They came forward at the call of what they and the great majority of their co-sectaries regarded as a sacred duty of religion, to give evidence in favour of their Guru. They asserted indeed that it would be their duty to give evidence against their Guru,

if he was in the wrong, but it was never alleged or pretended that it was not a duty to give evidence in favour of the Guru, if he was in the right. And this was a duty, the neglect of which would expose them to the reproach,—the due performance of which would entitle them to the applause of their sect and of their caste. Accordingly there was an obvious eagerness and alacrity on the part of the plaintiff's witnesses to come forward and give their evidence on behalf of the Maharajas—their Gurus if not their Gods—whom their opponents the reformers have had the profane hardihood to attack. It is not to be denied that this feeling is an intelligible one—that it is even in some degree a creditable one—but it is too obvious to need remark that it materially detracts from the value and reliability of the testimony that is mainly given under its influence.

If we now turn to the evidence of the plaintiff himself, it is too clear to admit of a doubt that the peculiar position in which he stands most materially affects the value of the evidence he gives, especially in repelling the personal charges that have been made against himself. It has been urged, and with substantial truth by the counsel for the plaintiff, that, in repelling the charges made on this plea of justification, the plaintiff is in the same position as if he were a defendant endeavouring to clear himself from a criminal accusation. He is so except in one respect he can be examined on his oath, in his own defence which the defendant in a criminal trial cannot. The law of England which allows no evedince to be given except on oath, recognises the existence of cases in which the sanction of an oath ceases to be any effectual

guarantee for truth. Where a man's life and liberty are at stake, it considers, and rightly, that his mere oath, as a sanction for truth, would be utterly valueless, and therefore, as it admits no evidence except on oath, it prohibits the defendant in a criminal case from giving any testimony at all as a witness on his own behalf. It is not so in cases which involve a man's reputation, though it is obvious that in all cases where the imputations on character are grave and serious and in precise proportion as they are grave and serious—*the value of the plaintiff's oath as a sanction for the truth of his testimony* becomes almost infinitesimally small. The plaintiff, as the old phrase runs, "gives his evidence with a rope about his neck" he has an interest in denying the charges made against him, which becomes stronger in the exact proportion in which those charges become graver—until in cases of very serious imputation, it may well be doubted whether, even in the most truth loving of countries, the sanction of an oath, as such, is practically of any value at all as a guarantee for truth. The truth, in such cases, must be tested by other means than those of mere oath against oath.

With these general observations I pass on to consider the evidence *under the third of the proposed heads of inquiry, viz., as it affects the general character of the Maharajas for licentiousness and debauchery.*

The evidence of this head is exceedingly voluminous, and I shall only select some of the more prominent passages. I will pass by the evidence of the defendant, to which reference has already been made, in considering the question of libel, or no libel, and go on at once to that of Mathuradass Lowjee a well informed and highly respectable

witness, Vallabhacharyan by sect and Bhattia by caste. "From childhood," says Mathuradass Lowjee, "when my father used to tell me that practice of adultery by the Maharajas was not in accordance with the old religion. I have had my attention turned to those parctices. Many persons know of those parctices, but they don't avow them for many reasons. I began to explain to my friends about eight or ten years ago that the Maharajas parctising adultery is wrong. In the year 1855 my caste took measures to prevent the adultery of the Maharajas, and I joined them; they made a writing and gave it. They proposed to put a stop to it by preventing the women from going at night to the Maharaja's temples. The Maharajas issued a handbill lately to prevent that writing from being brought forward in evidence in this Court. It was resolved at the time that the writing should not be brought into force till after the lapse of a year. That was, lest the Bhuleshwar Brahmins should say something against the Maharajas if the writing were published."

In corss-examination he says, "I was present at this meeting. I will swear a resolution was passed about adultery, a resolution prohibiting females from making *darshan* at night through the cold season. That was *not* owing to the danger of their being in the streets at night; *the reason was to prevent their being defiled by the Maharajas.*"

The witness then goes on to describe the particular acts which he has himself witnessed. "Several Maharajas press the hands of their female devotees with their feet; this is a sign for the purpose of committing adultery. When the woman looks towards the Maharaj, he makes signs with his eyes and smiles, and minding

these smiles, the woman goes accordingly into an inner room if the signs indicate that she should. I know this of my own knowledge." The witness then mentioned the names of two Maharajas whom he had often seen making signs to women, and, in one case, a grossly indecent gesture capable of only one meaning; he swore that he had frequently seen women going into and coming out of the bed-roooms of the Maharajas, and related with minute detail a scene of actual sexual intercourse between a Maharaj and a Bhattia female which, he in common with several respectable witnesses whom he named, had seen going on in the garden-house of Gokuldass Tejpal.

With regard to the dedication of "*tan, man, and dhan*," he said "This dedication does not take place with females till they are going to be married; it is made to Krishna. The Maharaj represents Krishna as stated in the Sidhant Rahasya; there is no difference, as far as the dedication is concerned, between Krishna and the Maharaj. As to the women, after the dedication the Maharaj does as he likes; he commits adultery with them; there are names of the Maharaj indicating this; one is 'Ras-Lila—Mahodadhi,' 'the ocean of amorous sport,' meaning that he can have intercourse with many women like Krishna. It is notorious among our people that, after dedication, the Maharajas do what they like with our wives and daughters. It is notorious through the whole word that the Maharajas are guilty of adulterous practices. Though this is so notorious, they retain their influence in the sect."

The witness then goes on to relate the result of an appeal to Jeewanjee Maharaj, to put a stop to these scandals—"Jeewanjee said 'All

persons are masters in their own houses; adultery has increased very much; it is difficult to put a stop to it. I cannot say anything to my elders nor to my equals. If I were to attempt to say anything to any one, he would not mind me. *All the Maharajas derive a great part of their income from women; how can they keep up their expenses if their income suddenly cease?* Like an opium eater, a man cannot suddnly give up the practice of lust to which he is addicted: it is difficult to abolish such a practice at once; have patience, and I will endeavour to have it abolished gardually."

This evidence, entirely uncontradicted and unshaken, corroborated as we shall see directly by other unimpeachable testimony, is to my mind conclusive as to the generally known existence of such practices. Jeewanjee dose not attempt to deny the evil; he admits and deplores his own powerlessness to suppress it.

Dr. Bhau Dajee says—"My opinion of the Maharajas for morality with women is very unfavorable. I have attended three Maharajas (besides the plaintiff) for venereal disease. I personlly, once almost publicly remonstrated with Jeewanjee on the subject of these immoralities. He said he had no control over the others to prevent them from committing acts of adultery."

Lukhmidass Khimjee says,—"The general reputation of the Maharajas is very bad as regards adultery; to my knowledge that bad reputation is well deserved. *I know to my own knowledge of adulterous acts and general licentiousness on the part of the Maharajas, of ten, twelve, or fifteen of them. The plaintiff himself described to me the acts and conduct of other Maharajas, naming eight or ten of them. He said they committed adultery; that he had*

spoken to several to dissuade them; and that with the exception of one Maharaj whom he named, the others promised to desist from such practices. He said 'Do not press me now, what income do I derive from you males? Most of my income is derived from females. If you make arrangements by which we may receive large dues we will give up these things.' After the Bhattia caste meeting of 1855, I had a conversation with Jeewanjee on the subject of adultery. Dr. Bhau Dajee was there, he said—'Reform yourselves; establish schools; make arrangements to prevent the Maharaja's from committing adultery to which they are addicted.' Jeewanjee said—'The other Maharajas will not obey me; the arrangement is difficult, the income of the Maharajas being principally derived from women.'"

Mr. Mangaldass Nathubhoy, referring to the same occasion, says—"Jeewanjee expressed regret at the existing state of things, but said some of the Maharajas get all their maintenance from women, and it would be very difficult for them to give it up."

Such are some passages from the evidence given on this point by witnesses of the highest character and credit; it was evidence not in any way shaken on cross-examination. How was it met on the other side? What is there in the case of the plaintiff to set against this mass of positive, varied, and yet concordant testimony? Nothing but blank denial; the assertion of absolute ignorance or total incredulity.

Take the plaintiff's own evidence; he positively denies the conversation with Lukhmidass Khimjee. As to the general subject, he says:—"I don't know whether any Maharajas have com-

mitted adultery. I have never seen them acting immorally with women. According to the prints, they are immoral; I believe them to be innocent; if guilty, it is contrary to the Shastras."

The witnesses called by the plaintiff to rebut the plea of justification went much further; they had never heard a word against the moral purity of any of the Maharajas till a few months ago; till they saw the imputations in the Bombay papers, *till this trial commenced; nay, till they came into court and heard those imputations for the first time suggested by the questions of counsel.*

This proves too much; it is absolutely incredible except on the supposition that these people obstinately refused to see, or hear or believe anything unfavourable to the character of their Gurus; that, like Gokuldass Kissordass, Hargovindass Moolchund, Narrottamdass Harribhoy, and others of their number, they believed it impossible for a Maharaj to be a bad man, or to commit sin; that, therefore, if they heard any reports against the conduct of a Maharaj, they would steadily refuse all credence to them.

Applying, then, to this part of the case the most familiar rules established in the science of jurisprudence for the sifting and weighing of testimony, I find it wholly impossible to come to any other conclusion than this, that the Maharajas as a class were, and for years notoriously had been, guilty of the immoralities imputed to them by the defendant in the alleged libel and in the plea of justification.

The fourth and last head under which I propose to review the evidence was that of the *personal acts of immorality charged against the plaintiff in the plea of justification.*

Under this head the testimony mainly relied on, in rebuttal of the charges, is naturally and necessarily that of the plaintiff himself. It is obviously therefore, very desirable to obtain, if possible, some test or measure of the value and credibility of the plaintiff's evidence when relied on in contradiction of the evidence adduced by the defendant. Such a test of credibility presents itself—clear, decisive, not to be explained away. It is unfortunately connected with one of the most repulsive parts of the case. It is alleged by the defendant's witnesses—it is denied by the plaintiff—that, on two occasions in the year 1860, one shortly before and one shortly after the alleged libel, he was affected with siphylis. It is, moreover, alleged on one side and denied on the other, that he admitted having had similar attacks on previous occasions, when he had resorted to a supposed mode of cure, not unheard of by those who have practised in the Criminal Courts of Europe.

Now what is the evidence on this point? Lakhmidass Khimjee states that the plaintiff requested him to bring Dr. Bhau Dajee to see him, as he was suffering from chancre (chandi) and had been so for seven or eight days; that the plaintiff said that he had caught it from an abandoned woman in Bombay; that he had once tried to cure himself of a similar attack by connection with an untainted woman, but that, though allowed by the Shastras, he did not like to try that mode of cure again, as the woman had caught the disease from him. So far Lakhmidass Khimjee.

The plaintiff, in his rebutting evidence, admits that Dr. Bhau Dajee was called in at the suggestion of Lakhmidass Khimjee, but that it was with reference to the management of some

girls' schools. He denies categorically that he ever told Lakhmidass Khimjee that he had "chandi," or that he had any conversation with him in reference to his complaint; or that he ever admitted having had connection with impure women in Bombay, or that he ever said a word as to having formerly tried to cure himself by connection with a second woman to whom he communicated the complaint.

Then comes the evidence of Dr. Bhau Dajee, who has medically attended all the Maharajas who, for the last ten or twelve years, have visited Bombay, and who, before his visit to the plaintiff, had attended three of the number for the venereal disease. Dr. Bhau Dajee says that, about the 20th of September 1860, he went to the plaintiff's house with Lakhmidass Khimjee and Wishvanath Narayan Mandlik. On the retirement of these two witnesses, the plaintiff said he had "chandi:" he ascribed it to heat; he said—" The full particulars of the case would be communicated to me afterwards. Next morning, the full particulars were conveyed to me by Govardhandass, his Secretary; Govardhandass told me plaintiff was suffering from "chandi." I told him I must examine before I could prescribe. He wanted me to prescribe. I prescribed a simple ointment." In cross-examination, Dr. Bhau Dajee says—" I understood the plaintiff to say he had a discharge from the ulcer. I can say positively he used the word 'chandi.' 'Chandi' has other meanings besides syphilitic ulcer: it is the slang term for chancre. A common ulcer would not be described as 'chandi.'"

In answer to this evidence the plaintiff says that when he consulted Dr. Bhau Dajee, he said he was subject to itches caused by heat (this

agrees with Dr. Bhau Dajee's statement.) He admits that at the time he had sores on the private parts; he denies that they were venereal; he denies that he ever used the word "chandi," the word he used was 'cháthá' (a Gujaratee word for sore or eruption.) He declares that he never told Dr. Bhau Dajee that he would send a person the next day to describe his symptoms; he admits that he sent Govardhandass the next day to Dr. Bhau Dajee, but that he so sent him in order to bring back a manuscript. "I said to Govardhandass, 'bring any medicine he may give you, and bring back the work.' Govardhandass brought back the prescription."

Now, apart from the use of the word "chandi," which Dr. Bhau Dajee positively affirms and the plaintiff positively denies—the important contradiction here is the denial that the plaintiff ever promised to send, or did in fact send, Govardhandass to communicate to Dr. Bhau Dajee the history of his case. There was one person who could set this point at rest, and that was Govardhandass himself. Was he called as a witness? No. Was any excuse offered for not calling him? None. What is the legitimate inference? Why, that if called, he would have been compelled, under pressure of cross-examination, to admit that he was sent by the plaintiff to relate the history of his symptoms and that those symptoms were what Dr. Bhau Dajee stated them to be.

This was on or about the 20th of September:—about three months later, in December 1860, Dr. Dhirajram Dalpatram is called in: "The plaintiff," says this witness, "told me the nature of his complaint; I ocularly inspected the part; it was a siphylitic ulcer on the *glans penis*. The history of the case given by my patient quite

confirmed my opinion as to the ulcer being siphylitic. I personally inspected the parts six or seven times. I attended him for a month. Externally black wash was applied, internally mercury: he continued the mercury treatment till he was salivated. The sore disappeared within a month. He told me he had suffered in the same way about three months before, in consequence of impure connection with a woman. I am sure he did not tell me he had eaten a great many chillies, nor that he had prickly heat. In the course of my visits, I remember his asking me whether the disease could be removed by intercourse with a fresh female? I said 'no.' He said he had tried it twice with fresh Bania females, it had succeeded the first time, not the second, because he was then somewhat out of condition. He said he had tried these experiments at Surat."

Such is the positive evidence of Dr. Dhirajram. What does the plaintiff say in reply?

"I consulted Dr, Dhirajram, and took the medicines he prescribed: I described my case to him: it was of the same character as when Dr. Bhau Dajee came; it had recurred. I described it as I did to Dr. Bhau Dajee: I said it was caused by heating medicines and scratching: I did not describe it as siphylitic '*chandi*': he did not inspect the parts. I had had no impure connection with a woman. *How could I, it is contrary to our religion to have such intercourse.* I did not tell him I had such intercourse. I did not tell him 'chandi,' would be removed by intercourse with a clean woman; I did not ask whether it could. I did not tell him I had tried the experiment twice, and that the second time it had not succeeded."

With regard to the medicines prescribed and the effect of them, the plaintiff says—"He gave me some powders which were mixed with water: the liquid was dark. I used this black wash; the lime water for it was prepared in my own place. I put the powder into it and so made black wash, which was applied. I took five or six pills. *After I took the medicine for four or five days, I suffered pain in the throat and left off. After the pain in the throat came on, I did not go on taking a pill a day; he gave me a preparation of borax and water to be used when the throat became sore. My gums pained me slightly. When this took place the sore had been cured.*"

Now what is the result of this evidence? Why that plaintiff admits he was mercurially treated, both internally and externally till salivation was produced; that when salivation was produced, or shortly after the sore was cured, that that sore was an ulcer on the glans penis—and yet that that ulcer was not siphylitic. An ulcer on the glans penis, mercurial treatment, a doctor who, after six or seven inspections, declares the ulcer to be siphylitic—this is the evidence on the one side. The mere denial of the plaintiff, who has a life-and-death interest in making that denial, is the sole evidence on the other. If the matter rested here, could any person accustomed to weigh evidence, have the shadow of a reasonable doubt left on his mind as to where the truth lay? But it does not rest here: it was elicited from the plaintiff that the part affected had been subjected to minute and microscopic observation by three medical gentleman in the course of the trial; *and yet not one of those medical gentlemen did the plaintiff venture to put into the witness-box.* It would be idle to

comment on such a circumstance as this; even in a doubtful case it would have turned the balance against the plaintiff; in a case like this, free without this circumstance from all reasonable doubt, it renders it absolutely impossible to come to any other conclusion than that the plaintiff was affected with siphylis, both in September and December of the year 1860.

And this conclusion is all important in its bearing on the value and credibility of the plaintiff's evidence: it is not only that having deliberately perjured himself on this one occasion, his oath where he stands alone in contradiction to credible testimony, is utterly valueless for all purposes and on all occasions—it goes further than this: the fact, as to which doubt is impossible, that the plaintiff had siphylis on two occasions in the year 1860, shakes to pieces the whole frame-work of his evidence and shows it all to be conceived in a spirit of hypocrisy and falsehood.

With great tact and plausibility, the plaintiff assumed, throughout the whole of his very lengthened evidence, a tone of parental piety, an outraged purity. When asked whether he had toyed with the bosom of the young lady in the temple at Beyt, his answer was "How can I commit such an act as to touch the breast of a woman, *when I regard all women as my children.*" Again, when questioned as to his still closer intimacy with a young married lady in Bombay, he repeats the expression "I regard all women as my children." Again he says "would I have told Kallabhoy Lallubhoy that there is no harm in adultery when adultery is strictly prohibited in our religion? How could I invent such a new thing" (as to say that

illicit intercourse is good for the health) "when I had no experience, never having committed adultery in all my life; it is a thing I hate. Amongst us these things are strictly prohibited; it is laid down that intercourse with one's own wife is lawful, but that intercourse with any other woman is unlawful. That includes intercourse with *cusbans*,"—he said in answer to a question of mine, and we have just seen how in denying that he ever had intercourse with an impure woman, he exclaimed "How could I, it is contrary to our religion to have such intercourse."

Convinced as I am on evidence the most clear and conclusive that this man laboured under an attack of siphylis, the result of impure connection, about the very time this alleged libel was published, I am constrained to regard these expressions of simulated purity as the offensive language of hardened hypocrisy.

There is another respect in which a material, but to me always a most incredible, part of his evidence is utterly shattered by the conclusion at which I have been compelled to com e, as to his having been under treatment for venereal disease in 1860. The plaintiff himself most positively swore, and his personal attendant swore quite as positively, that while a young man in the prime of life, for the space of four years, all of which were spent without a wife, and two of which were spent on pilgrimage—the plaintiff, never on any one occasion, had carnal intercourse with any woman of any rank or class whatsoever. The statement upon the face of it, seemed in the highest degree improbable: here was a young Hindu –a Maharaj—no ascetic—the hereditary high priest of a religion of enjoyment with the amorous

Krishna for its God, and an ocean of *Ras-Lila* for its paradise—in the vigour of early manhood, without a wife, on pilgrimage, never once in the space of four years having sexual intercourse of any kind with a woman. A less probable story was hardly ever sworn to in a Court of justice; but what shred, what rag of probability is left to cover the nakedness of this transparent lie, when we find this alleged purist in matured life, in the city of his enemies, with a wife and family in his dwelling-place, so little capable of controlling his sexual passions as to purchase pleasure at the price of disease. It has been said that if the plaintiff had an unlimited command of pure women, he could not have resorted to those who were impure: there is no force in the remark: polygamy and courtezanship are always found to flourish side by side, and it requires but a very moderate knowledge of the world and of history to be aware, that the women who make pleasure a profession are not least patronized by those for whom immoderate indulgence has rendered the sexual act at once a necessity and a weariness.

For the reasons indicated, I find it utterly impossible to treat the plaintiff's mere oath as of any value at all when it stands alone in opposition to the evidence of credible witnesses.

Then, are the witnesses who depose to the particular acts of immorality with which the plaintiff is charged in the plea of justification credible witnesses? In my opinion, they are thoroughly so. These witnesses are Lakhmidass Khimjee, and the two young men Kallabhoy Lalloobhoy and Chatturbhooj Waljee. As to Lakhmidass Khimjee, his credibility is beyond suspicion: a grave, respectable, intelligent man, of the highest position in his caste, animated by an earnest desire to

purify the practices of his sect, he gave his evidence in a quiet, calm, straightforward manner, eminently calculated to conciliate belief; nor was he betrayed into a single inconsistency or self-contradiction in the course of a very long and searching cross-examination. The young Kayasth, Kallabhoy Lalloobhoy—a son of the Sheristedar of the Sudder Adawlat, gave his testimony with extreme intelligence and in a frank, artless, natural manner, which unavoidably created the impression that he was honestly speaking the truth. The young Bhattia, Chatturbhooj, was a less intelligent person. but he too gave his evidence calmly and clearly, nor was he shaken in a single particular.

It was said that the testimony of these two young men was open to suspicion, because both were great friends of the defendant; because one had also been his pupil for some time at the Elphinstone Institution, and the other was the nephew of Dr. Dhirajram. If they had told a less plain and unvarnished tale, if they had been shaken in cross-examination, if they had become confused, or hesitating, if they had shown any eagerness of partizanship, I might have felt there was something in the suggestion; though even then, it might fairly have been said that, in a case like this, no motive but one of friendship for the defendant, or earnest zeal for the reform of the sect, could induce people to brave relate in open court what they knew of the mal-practises of the Maharaj. But consiodium (and, if members of the sect or caste—worse than odium) by coming forward to daring the mode in which these young men gave their evidence, the fact that one is a relation of Dr. Dhirajram and that both are friends of the defendant, though it may have supplied a reason for watching their testimony more closely,

affords none for discrediting in any way the testimony which in fact they gave. And that testimony was wholly uncontradicted except by the mere denial of the plaintiff—a denial, which for the reasons already more than sufficiently indicated, may be regarded for all purposes of evidence as practically worthless.

Kallabhoy Lalloobhoy, who seems to have been on very intimate terms with the plaintiff, speaks to two instances, one in Surat and one in Bombay, in which he witnessed facts that can leave no reasonable doubt of illicit intercourse between the plaintiff and two ladies of the Bania caste. The first took place at Surat about three years ago: "I was sitting," says the witness, "with the plaintiff and a male Bania in his 'diwankhana.' A Bania girl, about 14 or 15, came in with a female servant of the Maharaj. She passed through the 'dewankhana' where we were sitting and went into the side room: the Bania man immediately got up and went away; the plaintiff left the room and went into that into which the female had gone. I was a boy at that time" (he would have been about 13) "I attempted after some time to go into the room which the Maharaj had entered: I expected folded *pan-supari*, and I went to get it. I entered the room. I saw the Maharaj sitting with the girl on a couch embracing and kissing. I did *Darshan* (reverence) to him: he got up, took me by the arm, and took me out; he then gave me some *pan-supari*; I then left and he went into the inner room again."

That is the first case; the second took place in Bombay, where the youth had renewed his intimacy with the plaintiff, and was well aware from conversation that had passed between them that his friend was acting in public the part of

a reformer. Kallabhoy had his suspicions as to the genuineness of these professions. "In consequence," he says, "of what I heard about the plaintiff, I once watched a lady to his house. I heard people say, pointing to her 'that is a lady with whom the Maharaj has fallen in love.' I followed her to the plaintiff's house; she entered a doorway inside the 'diwankhana.' I went into the 'diwankhana' and sat there; the plaintiff was there; the plaintiff went inside into the room the lady had entered. I did not go away. I remained sitting there about half an hour. The plaintiff came out; he had only his waist-cloth on. I began to smile; he asked me 'why are you laughing' (he was laughing too) I said 'you are certainly effecting a very great reform.' He laughed and said nothing. Presently, the lady came out; her dress was disordered. I looked at her and laughed. She laughed and went away. From her dress I can say she was a Bania: from her dress and jewels, I concluded she was a respectable woman."

That is the testimony of Kallabhoy,—testimony given with a simplicity of manner and naturalness of detail;—which it would be difficult to surpass: testimony which, unshaken as it was by cross-examination and uncontradicted except by the bare denial of the plaintiff, I have no difficulty in believing to be substantially the truth.

Chatturbhooj, who also appears to have been a good deal about the plaintiff's house, deposes to having seen a third young lady introduced into the plaintiff's bed room, and both he and Kallabhoy concur as to the fact of those conversations between themselves and the plaintiff in which he maintained the doctrine, and confirmed it by the results of his own experience, that illicit inter-

course with women is favourable to the health and vigour of the human system. These conversations are of course denied by the plaintiff, but it is also urged that they are intrinsically improbable. I do not think so. In this country, youths of 16 or 17 are often husbands and fathers; in no country do we find that lads of that age are indisposed to enter into such discussions. As to the improbability of the plaintiff's taking part in them, would there, it may be asked, be any thing strange in a Mormon elder taking up such a topic in defence of polygamy, if pressed hard in argument by a couple of young unbelievers in the merits of that patriarchal institution?

And now as to the evidence of Lakhmidass Khimjee. I shall consider first that part of his testimony which relates to the plaintiff's conduct in Bombay, reserving to the last, the consideration of that which relates to his earlier immoralities at Beyt. Lakhmidass Khimjee, like many others, believed in the professions of reform with which the plaintiff introduced himself to the Vallabhacharyan public of Bombay. He was come to promote female education; he was open to argument on the question of widows' remarriages. It was known—and this is a fact which should be borne in mind to the plaintiff's credit—that he had opened, and that he contributed to support, a flourishing boys' school at Surat, where instruction was given, amongst other things, in Sanscrit. These things more than countervailed with Lakhmidass Khimjee the scandals of the plaintiff's youth; and he appears, from the moment of his arrival in Bombay, to have entered into warm and friendly relations with the new Maharaj. "I called on the plaintiff," he says "the second or third day after his arrival. I was

on friendly terms with him, saw him twice or thrice a day, invited him to my house, asked friends to meet him. I did this because he was making promises of effecing reform, abolishing these bad practices, and getting girls to be permitted to learn. I formed an opinion subsequently that plaintiff continued his former bad practices, and for three or four months I had been misled. One day I went to his house and was sitting conversing, when two females arrived: one of them had a silver goblet in her hand: she was about 20 ; the other was a widow about 40 ; the young woman was a Cutchee Bhattiani, a married woman."

The witness then goes on to state that the young lady having been conducted by a female servant into the bed room the plaintiff sent him off to the printer's to make immediate arrangements for the publication of some article. "I went downstairs," says the witness, "but some suspicion crossed my mind, and after a short time I went upstairs again into the same room: no one was there except the widow who was standing beside the door; I continued sitting there till they came out. First the Maharaj came out: on observing me, he grew pale. Then the young lady came out: she was smiling and laughing; her rose-coloured sarree was in a confused, rumpled state; it had been all right when she went in. She had not the silver goblet. I presume she had given it to the Maharaj. Both the ladies shortly left. I remained. Nothing was said on the subject at that time, but "in the evening," "says the witness, "I went again: the Maharaj took me into an inner room to have some private conversation with me. He began; he said 'what have you done with regard to the opening of

female and other schools; speak to Mangaldass, and others; request their aid; get up a subscription list.' I said 'Maharaj, this is all sham; you profess to be a reformer and to wish to open female schools; and in private, you commit such bad acts, such adulteries.' His answer was 'yes, you might have suspected me, but I have not committed any bad acts; I only went in to accept food from the female.' To this I replied 'yon told me that when females came for that purpose you did not take them inside; if you went in to accept food, why did you leave the widow outside.' He did not answer that and changed the conversation."

Such is the evidence of the defendants witnesses as to the immoralities of the plaintiff during his recent residence in Bombay. I have reserved for the last the consideration of the scene which Lakhmidass Khimjee deposes to having witnessed fifteen years ago at Beyt. Here again, I shall let the witness speak for himself:—

"There is a temple at Beyt dedicated to Laxmi: the plaintiff threw gulal there. There were females present; he threw the gulal on the females, then on a number of persons near the gate. When the gulal was thrown in two or three handfuls, persons outside the inclosure could not see what was going inside. Immediately after throwing the gulal, he squeezed the breasts of a young girl, a Bhattiani, who was near the gate. She smiled. A few days after this, I and my uncle (Damodar Dewjee) went to the plaintiff's house at Beyt; it was about one or half-past one o'clock in the day; he was lying in his bed. I and my uncle went up and began shampooing his legs. It is usual to do so when the Maharaj is lying down; regarding him

as a God, shampooing his legs is considered a pious act. While so employed, the girl, whose breasts the Maharaj had squeezed, came accompanied by a widow. The widow came up and whispered to the Maharaj. He said to us 'go out.' I and my uncle then left the bedroom and went outside. The girl was left there; afterwards the widow came out and shut the door, and held the chain. The widow smiled and asked my uncle if I would like to see *Ras-Lila*. We went in. The plaintiff was in the act of having carnal intercourse with the girl inside. The plaintiff said to my uncle, 'What will he (meaning me) give for seeing this.' My uncle said, 'He will do you service.' Before I went in I had agreed to give 100 Cutch cowries (about 30 rupees) for seeing the sight. I made my respects (darshan) and came out. I was then about 18 or 19 years of age." "It is considered," continues the witness, "a pious act by Vaishnavas to witness the *Ras-Lila* of the Maharaj; it is a custom in the sect to pay for witnessing this act; both the sectary who sees, and the woman who is enjoyed, pay; to have connection with the Maharaj is considered to lead to 'Gowlok' (the paradise of the 16,000 gopees.")

Such is the sworn testimony of this very respectable witness, given with the most perfect simplicity and candour, given as though he was relating nothing extraordinary—absolutely unshaken in cross-examination. The plaintiff, in answer to question put by his counsel, contradicts absolutely and categorically the whole story. As to the value of that contradiction standing alone, nothing further need be said; but on this part of the case, the plaintiff attempted to go beyond mere contradiction and called three witnesses to throw doubt on the statement of

Lakhmidas Khimjee, by showing that in the temple he specifies at Beyt, the temple of Laxmi, gulal is never thrown on the worshippers, but, only on the image it being the temples, of a female divinity. The first of these witnesses Devidass Hansraj, formerly superintendent, for the Gaikwar, of the temple at Beyt, proves very little as to the point for which he is principally called, "Gulal," he says, "is thrown on the *images* in all the temples; but not on the worshippers when the image is female." But having thus laid down the rule, he admits there may be exceptions, for he adds "a witness may have seen it thrown on the worshippers at Laxmi temple; I have not, that is all I mean."

Mitharam Purshottam a Bhattia from Rajkote, whose duty it was nine or ten years ago to follow the Maharajas round the temples of Beyt and collect the tax due to the Gaikwar from the devotees, gives the following evidence:— "Gulal was only thrown *on the worshippers* in the temple of Dwarkanathjee at Beyt: it is thrown *by the Maharajas and the Brahmacharis*.

Premjee Poonja, the third witness, a Pokarna Brahman, who has come down to Bombay to act as cook, but who previously for twenty years had been a servant in the temple of Radhajee, another female divinity at Beyt, contradicts witness No. 2 in two important particulars. Agreeing with him that Gulal in Laxmi temple is only sprinkled on the image, he swears that even in the temple of Dwarkanathjee, it is only thrown *on the* musicians, *not on the worshippers*, thrown *not by the Maharajas* at all, only by the Brahmacharyis.

Even if the point were a material one, it is clear that this evidence of contradiction

wholly fails: but the point is not a material one; the evidence of these very three witnesses shows this temple of Laxmi at Beyt to be one of five small shrines dedicated to different gods and goddesses, all of which are in close proximity. Lakhmidass Khimjee, without any serious impeachment of his accuracy, may easily have mistaken one of these small shrines for another; or the plaintiff to serve a particular object, may have done an act which was not strictly regular.

There is another objection to this whole story founded on the proposition that it is incredible in itself, as involving a volation not only of the most universally observed laws of decency, but of the very principles on which our common human nature is built up. This is a very inconclusive objection; it is not an objection likely to have any weight with those whom reading and experience have crried beyond the circle of home manners and home opinions. It is difficult for an Englishman of the 19th century to believe in the existence of such a state of manners as is depicted by Petronius or Martial, and yet we know that these two writers were the most fashionable and favorite authors among their Roman contemporaries; the very essence of their popularity consisting in the general truthfulness of their social portraitures. So in order to put ourselves in a position for judging adequately of the probable truth of such a story as this, we must endeavour to realise as best we can the state of feeling habitual among those whose corruptions it exposes. We must suppose the case of a weak and blinded people; a rapacious and libidinous priesthood; a God whose most populiar attributes are his feats of sexual prowess; a paradise whose most attractive title is that of

"a boundless ocean of amorous enjoyment." But there is one plain fact which on this matter is worth a world of speculation. So little did Lakhmidass Khimjee suppose that there was any thing incredible in the story, that at a large party at Gokuldass Tejpall's, he made it the subject of an attack half-jocose, half earnest against his uncle, who has now for some years been absent in Zanzibar. He mentioned the names of several highly respectable members of his caste and sect in whose presence the alleged attack was made: those witnesses were put into the box and tendered for cross-examination, but no question was put to them tending in any way to impugn the statement of Lakhmidass Khimjee.

Such is the evidence in support of the charges made against the moral character of the plaintiff in the plea of justification; on my mind that evidence leaves not a shadow of doubt; the charges made are, in my opinion, fully substantiated. Jaddunathjee Maharaj is conclusively shown to have been in no degree superior in morality to the average of his brethren, and principally to have differed from them in the tact and cunning with which he employed public professions of zeal for reform as a convenient cloak for uncleanliness.

Having thus gone through all the observations I proposed to make on the evidence, there is only one other point on which I wish to say a few words.

This trial has been spoken of as having involved a great waste of the public time. I cannot quite agree with that opinion. No doubt much time has been spent in hearing this cause, but I would fain hope it has not been all time wasted. It seems impossible that this matter

should have been discussed thus openly before a population so intelligent as that of the natives of Western India, without producing its results. It has probably taught some to think; it must have led many to enquire. It is not a question of theology that has been before us! it is a question of morality. The principle for which the defendant and his witnesses have been contending is simply this—that what is morally wrong connot be theologically right—that when practices which say the very foundations of morality, which involve a violation of the eternal and immutable laws of Right,—are established in the name and under the sanction of Religion, they ought, for the common welfare of Society, and in the interest of Humanity itself, to be publicly denounced and exposed. They have denounced—They have exposed them. At a risk and to a cost which we cannot adequately measure, these men have done determined battle against a foul and powerful delusion. They have dared to look Custom and Error boldly in the face, and proclaim before the world of their votaries, that their Evil is not Good, that their Lie is not the Truth. In this doing they have done bravely and well. It may be allowable to express a hope that what they have done will not have been in vain—that the seed they have sown will bear its fruit—that their courage and consistency will be rewarded by a steady increase in the number of those, whom their words and their examples have quickened into thought and animated to resistance, whose homes they have helped to cleanse from loathsome lewdness, and whose souls they have set free from a debasing bondage.

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